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A F T E R N O O N     S E S S I O N

1:51 p.m.

THE VIDEO OPERATOR: This is

videotape number 7, the continuation of the deposition of Mr. Whitman. Today is August 15th, 1995. The time on the screen is 1:51:24. You're on the record.

J O H N     M.     W H I T M A N,  
resumed, having been previously duly sworn, was examined and testified further as follows:

CONTINUED EXAMINATION

BY MR. ROGERS:

Q.     Good afternoon, Mr. Whitman.

A.     Good afternoon.

Q.     Between the time that we broke for lunch today and right now, did you speak with counsel about any of the documents that have been entered as exhibits in this deposition?

A.     Yes, I did.

Q.     Could you describe those conversations?

MR. NUNLEY: Absolutely not;  
attorney/client privilege.

MR. ROGERS: You're going to instruct

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01:51:44 2 the witness not to answer?

01:51:44 3 MR. NUNLEY: Absolutely.

01:51:46 4 Q. Do you accept that instruction?

01:51:46 5 A. Yes, I do.

01:51:48 6 Q. Could you identify the documents that  
01:51:50 7 you spoke about.

01:51:50 8 MR. NUNLEY: You may do that.

01:51:52 9 A. It was the last document. That's a  
01:51:54 10 poor answer. Let me get it for you.

01:52:00 11 Q. Exhibit 13?

01:52:00 12 A. Yes, that's correct.

01:52:04 13 Q. Is that the only document?

01:52:04 14 A. Yes, sir.

01:52:10 15 Q. Earlier today we talked about the  
01:52:16 16 data in paragraph 25 of your affidavit, Page 12?

01:52:30 17 A. Okay.

01:52:32 18 Q. And you indicated to me this morning  
01:52:38 19 that that data was based upon the July '95 data  
01:52:40 20 that you had seen in preparing for this  
01:52:40 21 affidavit?

01:52:40 22 A. Yes, sir.

01:52:48 23 Q. The data of July '95 that you're  
01:52:50 24 referring to, do you know when those tests were  
01:52:50 25 conducted?

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01:52:56 2 A. During July of '95, but the specific  
01:52:56 3 dates I do not remember.

01:53:08 4 Q. Okay. Earlier today I asked you  
01:53:18 5 about paragraph 18 on Page 9 of your affidavit.  
01:53:26 6 Specifically the final sentence, and I'll read  
01:53:30 7 it, "None of the flavors, preservatives or  
01:53:34 8 humectants added to RLB or RLTC contains  
01:53:36 9 nicotine." How do you know that?

01:53:40 10 A. Analysis of those compounds when I  
01:53:44 11 saw them as QA manager at Park, nicotine was not  
01:53:48 12 listed as a constituent of any of those  
01:53:48 13 materials.

01:53:52 14 Q. And remind me the years in which you  
01:53:52 15 were the QA manager of Park 500?

01:54:00 16 A. Roughly, '77 through '84.

01:54:08 17 Q. And are you sure that from 1984 to  
01:54:12 18 the present there's been no change, or rather no  
01:54:20 19 new flavors added to either RLB or RLTC?

01:54:24 20 A. The only difference that I'm aware of  
01:54:30 21 then until now is the substitution of the liquid  
01:54:32 22 version M10 for the Cochise.

01:54:38 23 Q. And I have the same question with  
01:54:40 24 respect to humectants. Are you sure that from  
01:54:48 25 1984 to the present there's been no new

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01:54:52 2 humectants added to either RLB or RLTC?

01:55:06 3 A. I don't remember if the humectants  
01:55:10 4 are the same; but I have seen analyses of the  
01:55:12 5 current humectants and they also do not contain  
01:55:14 6 nicotine.

01:55:16 7 Q. What specific analyses have you seen?

01:55:18 8 A. Just the raw material analyses, the  
01:55:20 9 spec sheet that would come with those materials.

01:55:30 10 Q. And are you sure that the analyses  
01:55:34 11 that you've seen are of all of the current  
01:55:36 12 humectants that are added to either RLB or RLTC?

55:40 13 A. They were for PG and glycerine which  
01:55:42 14 are the current humectants.

01:55:44 15 Q. And finally with respect to the  
01:55:48 16 preservatives, are you sure that from 1984 to the  
01:55:52 17 present there have been no new preservatives  
01:55:54 18 added to either RLB or RLTC?

01:55:58 19 A. From 1984 till the present I know of  
01:56:02 20 no new preservatives that are being used.

01:56:06 21 Q. So paragraph 18 is based upon  
01:56:12 22 specific data that you saw prior to or up to 1984  
01:56:20 23 with respect to flavors and preservatives; is  
24 that correct?

56:22 25 A. Let me think for a minute.

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01:56:22 2 Q. Okay.

01:56:28 3 A. In any event, Alex, I'm trying to  
01:56:30 4 remember when did we introduce paraben and the  
01:56:34 5 year is actually escaping me sitting here. But I  
01:56:38 6 have also seen analysis of paraben and it does  
01:56:40 7 not contain nicotine.

01:56:48 8 Q. Remind me what your undergraduate  
01:56:50 9 education is in, Mr. Whitman?

01:56:52 10 A. I have a BS degree in chemical  
01:56:52 11 engineering.

01:56:54 12 Q. And your Master's was in commerce I  
01:56:56 13 think you said?

01:56:56 14 A. Commerce.

01:56:56 15 Q. Is that business?

01:57:00 16 A. It's a poor man's version of an MBA.  
01:57:00 17 There's no thesis required.

01:57:06 18 Q. And turning to paragraph 38 that we  
01:57:16 19 were speaking about just prior to the break, when  
01:57:18 20 you use the term in paragraph 38 commercially  
01:57:24 21 feasible manner, did you conduct any cost/benefit  
01:57:26 22 analyses of any procedure in reaching that  
01:57:26 23 conclusion?

01:57:30 24 A. No, I did not.

01:57:34 25 Q. Did you identify any processes that

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you subsequently determined were not commercially feasible?

A. I'm sorry, say that again, Alex.

Q. Sure. In contemplating -- in contemplating the accuracy of ABC's assertion as it was told to you, did you think of or identify any potential procedures which you subsequently concluded were not commercially feasible and so, therefore, you could make the statement in paragraph 38 that you know of no procedures that are commercially feasible? Do you understand my question?

A. I know of no procedures, so, therefore, I didn't contemplate any from a business standpoint.

Q. Okay. I'm just trying, again, to understand what you mean by commercially feasible. If I asked you whether it was a physical impossibility for Philip Morris to remove nicotine from the solubles in the RL process, what would your answer be?

MR. NUNLEY: You'd get an objection <sup>issues of</sup> first because I think ~~using~~ physical impossibility, I mean that doesn't fall within

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01:58:48 2 the realm of materiality in this case. He has  
01:58:52 3 told you he knows of no procedure by which to do  
01:59:06 4 that. He says at 13:58:14, "I know of no  
01:59:08 5 procedure, so, therefore, I didn't contemplate  
01:59:10 6 any from a business standpoint."

01:59:16 7 Q. So, could you have dropped the last  
01:59:18 8 three words of the third sentence so that the  
01:59:22 9 third sentence would have read instead, "I am  
01:59:26 10 unaware of any technology that would allow Philip  
01:59:28 11 Morris to remove the nicotine contained in the  
01:59:32 12 solubles," period? Could you drop the last five  
59:34 13 words and that sentence would mean the same thing  
01:59:36 14 as you intended it to mean in its current state  
01:59:38 15 in the affidavit?

01:59:54 16 A. From my own personal perspective,  
01:59:54 17 probably, yes.

02:00:16 18 Q. Having reviewed that portion -- let  
02:00:18 19 me return to Exhibit 13.

02:00:24 20 A. Exhibit 13?

02:00:26 21 Q. Right. The Sepracor proposal.  
02:00:30 22 First, having reviewed whatever portion of the  
02:00:30 23 document it is that you've reviewed, does that  
02:00:32 24 refresh your recollection about any business  
00:38 25 dealings between Philip Morris and Sepracor,

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2 Inc.?

02:00:40 3 A. I have no knowledge of any dealings  
02:00:42 4 in that regard.

02:00:42 5 Q. And have you read the executive  
02:00:44 6 summary of Exhibit 13?

02:00:48 7 A. Yes, I read that this morning with  
02:00:48 8 you.

02:00:50 9 Q. And having reviewed the executive  
02:00:58 10 summary of that document, do you understand the  
02:01:00 11 procedure described in the executive summary to  
02:01:04 12 be a means by which Philip Morris could remove  
01:08 13 nicotine from the solubles in the RL process?

02:01:14 14 A. From just reading the executive  
02:01:16 15 summary I have no idea.

02:01:22 16 Q. How about based upon your reading of  
02:01:24 17 whatever other portions of the document you read  
02:01:30 18 this morning? Your understanding of the document  
02:01:36 19 right now, I'm not asking you anything more than  
02:01:36 20 that, just your understanding of the document to  
02:01:38 21 the extent that you've read it, do you understand  
02:01:42 22 the procedure described in this document to be a  
02:01:44 23 means by which Philip Morris could remove  
02:01:48 24 nicotine from the solubles in the RL process?

01:50 25 MR. NUNLEY: Alex, where in the

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document is the procedure described?

Q. Well, if I could focus your attention on the -- let's start with your distinction in paragraph 38 of the patent number 5,018,540, and in describing your understanding of that patent in the second to last sentence of paragraph 38, you say as follows: "The technology in that patent can only be used to remove nicotine from dry," underlined, "tobacco. It cannot be used to remove nicotine from a liquid," underlined, "solution, like the solubles." So I take it that that's a distinction you make between what happens in the RL process and the process described in U.S. patent number 5,018,540; is that correct?

A. Which is basically the ART process, correct.

Q. Okay. And let's turn to the executive summary of Whitman Exhibit 13, the first sentence of the second paragraph, and I'll read it, "Sepracor has identified a membrane-based process scheme for the selective removal of nicotine from an aqueous feed stream derived from Philip Morris's proprietary

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02:03:16 2 extractor process without affecting the levels of  
02:03:22 3 other flavor components (lactones, amides,  
02:03:34 4 terpenoids, esters, et cetera)." Exhibit 13  
02:03:36 5 contemplates a procedure by which nicotine is  
02:03:40 6 removed from an aqueous solution. Do you agree  
02:03:40 7 with that?

02:03:42 8 MR. NUNLEY: Objection to the use of  
02:03:44 9 the term contemplates.

02:03:48 10 Q. It is describing a system for  
02:03:50 11 removing nicotine from an aqueous solution; is  
02:03:52 12 that correct?

02:03:52 13 MR. NUNLEY: The executive summary?

02:03:54 14 MR. ROGERS: Yes, that's where we  
02:03:54 15 are.

02:04:02 16 A. I mean that's what it states in that  
02:04:02 17 first sentence.

02:04:04 18 Q. Okay. And turning to paragraph 38 of  
02:04:18 19 your affidavit you describe the patent 5,018,540  
02:04:20 20 as not applicable to the RL process because it  
02:04:24 21 can only be used to remove nicotine from dry  
02:04:28 22 tobacco, not from a liquid solution. Is the  
02:04:32 23 description in the executive summary closer to  
02:04:34 24 what happens in the RL process than U.S. patent  
02:04:38 25 5,018,540?

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02:04:42 2 A. I have no idea from the standpoint of  
02:04:44 3 the fact that that's such a generalized statement  
02:04:50 4 here. I mean what aqueous feed stream?

02:04:52 5 Q. Is this document, Whitman Exhibit 13,  
02:04:54 6 the first you've seen description of a procedure  
02:04:58 7 to remove nicotine from an aqueous solution?

02:05:06 8 A. Yes, sir. To my recollection, yes.

02:05:08 9 Q. So prior to today, you had never  
02:05:12 10 heard of any procedure to remove nicotine from an  
02:05:14 11 aqueous solution?

02:05:20 12 A. Not that I can recall, no.

05:22 13 Q. Did you have occasion to read Whitman  
02:05:24 14 Exhibit 13 during the break?

02:05:26 15 A. No, I really didn't.

02:05:28 16 Q. You didn't look at it at all?

02:05:30 17 A. We looked at it, but only one  
02:05:32 18 particular section.

02:05:48 19 Q. Now having looked at the executive  
02:05:48 20 summary and whatever other sections you've looked  
02:05:54 21 at today, would you change any portion of your  
02:06:00 22 testimony in paragraph 38 of your affidavit?

02:06:14 23 A. Not -- not that I can see, no.

02:07:12 24 Q. You indicated earlier today that in  
07:18 25 preparing paragraph 38 you did see U.S. patent

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02:07:22 2 5,018,540?

02:07:56 3 A. Yes, I did.

4 MR. ROGERS: Would you mark this as  
02:07:56 5 Exhibit 14.

6 (Whitman Exhibit 14 for  
7 identification, copy of U.S. patent 5,018,540,  
8 production numbers 2022902477 through 2022903291,  
9 and PA 151916 through PA 151975.)

02:08:08 10 Q. You've just been handed what's been  
02:08:36 11 marked as Whitman Exhibit 14 which is a copy of  
12 U.S. patent 5,018,540 and the production numbers  
13 are 2022902477 to 2022903291. Corresponding  
14 defendant production numbers are PA 151916 to PA  
15 151975.

02:08:42 16 Does this appear to be the same  
02:08:48 17 patent that you reviewed in preparing paragraph  
02:08:48 18 38 of your affidavit?

02:08:58 19 A. Yes, it does.

02:09:00 20 Q. And could you identify any and all  
02:09:04 21 sections of this patent on which you relied in  
02:09:12 22 preparing paragraph 38?

02:09:14 23 MR. NUNLEY: Well, if you're going to  
02:09:16 24 say that, Alex, I'll ask him to read the entire  
02:09:16 25 patent.

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02:09:18 2 MR. ROGERS: He indicated that he did  
02:09:20 3 read the patent in preparing paragraph 38.

02:09:22 4 MR. NUNLEY: That's right, and that  
02:09:26 5 was a week or so ago. If you want him to tell  
02:09:32 6 you each and every section that he's relied on  
02:09:36 7 then he can simply read through it and as he  
02:09:38 8 reaches the sections he relied on he can tell you  
02:09:42 9 that if that's how you want to do it.

02:09:46 10 A. We discussed the patent from a  
02:09:48 11 general standpoint, I believe I said this this  
02:09:54 12 morning, and did not go through it line by line.  
02:09:56 13 I mean the patent as it's described refers  
02:09:58 14 specifically to the ART process and the ART  
02:10:00 15 process is based on using dry tobacco.

02:10:04 16 Q. And so is that the distinction that  
02:10:10 17 you relied on between the ART patent and the RL  
02:10:12 18 process in executing paragraph 38 of your  
02:10:16 19 affidavit, that distinction between dry versus  
02:10:16 20 wet?

02:10:18 21 MR. NUNLEY: Objection as to form.

02:10:20 22 A. You need to clarify. I'm not sure  
02:10:22 23 exactly what you're referring to.

02:10:30 24 Q. You indicated that the patent as it's  
02:10:32 25 described refers specifically to the ART process

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02:10:38 2       and the ART process is based on using dry  
02:10:40 3       tobacco. And so my question was is the  
02:10:44 4       distinction that you've just relied -- is that  
02:10:48 5       the distinction, meaning dried tobacco versus a  
02:10:50 6       soluble solution, the distinction that you relied  
02:11:00 7       on in determining that the ART patent, the  
02:11:02 8       technology described in the ART patent could not  
02:11:02 9       be used in the RL process?

02:11:20 10       A.       Primarily, to my recollection, yes.

02:11:26 11       Q.       Could you describe what you  
02:11:28 12       understand the ART process to be?

11:36 13       A.       It's use of supercritical fluid  
02:11:40 14       extraction to remove nicotine from tobacco.

02:11:44 15       Q.       From dry raw tobacco materials; is  
16       that correct?

02:11:48 17       A.       From tobacco leaf, yes, the lamina  
02:11:48 18       portion.

02:11:50 19       Q.       Does it have to be lamina?

02:11:56 20       A.       As opposed to?

02:11:58 21       Q.       Any other part of the tobacco leaf?

02:12:04 22       A.       I don't recall.

02:12:04 23       Q.       Could you, for example, use the  
02:12:08 24       supercritical extraction process to remove  
12:16 25       nicotine from dry stems?

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02:12:18 2 MR. NUNLEY: John, if you know of  
02:12:20 3 testing of that type you can answer. If you  
02:12:22 4 don't, I think it calls for speculation.

02:12:24 5 A. I've never seen results on that  
02:12:24 6 testing per se.

02:12:28 7 Q. My question was do you know whether  
02:12:30 8 you could use the supercritical extraction  
02:12:32 9 process --

02:12:32 10 A. I'm not sure.

02:12:34 11 Q. To remove nicotine from dry --

02:12:34 12 A. I'm not sure.

02:12:36 13 Q. You're not sure. Do you know whether  
02:12:38 14 anybody's conducted any tests?

02:12:38 15 A. Not that I'm aware of.

02:12:40 16 Q. Did you inquire as to whether anybody  
02:12:42 17 at Philip Morris had conducted such tests in  
02:12:44 18 preparing paragraph 38 of your affidavit?

02:12:44 19 A. On stems?

02:12:50 20 Q. Yes.

02:12:50 21 A. No, I did not.

02:12:52 22 Q. How about whether you could -- tests  
02:12:54 23 on whether you could use the supercritical  
02:12:56 24 extraction process to remove nicotine from any of  
02:13:00 25 the other dry raw material components used in RL?

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02:13:12 2 A. No, I didn't ask that question.

02:13:18 3 Q. And if I can direct your attention to  
02:13:24 4 column 1 of the patent which appears on the  
02:13:28 5 fourth page of the exhibit that you have,  
02:13:32 6 production number PA 151919, there are several  
02:13:42 7 patents cited in the second paragraph and I'll  
02:13:44 8 just go through some of them. Did you consult  
02:13:52 9 the first one, patent number <sup>678,362</sup> ~~6,078,362~~ in  
02:13:52 10 preparing your affidavit?

02:13:52 11 A. No, sir.

02:13:56 12 Q. Did you consult any patent cited in  
02:13:58 13 that second paragraph here, and take a moment to  
02:14:00 14 look at all of them, did you consult any of them  
02:14:08 15 in preparing paragraph 38 of your affidavit?

02:14:10 16 MR. NUNLEY: Objection; compound.

02:14:34 17 A. No, not that I'm aware of.

02:14:36 18 Q. And let me ask you specifically, do  
02:14:38 19 you see halfway through the paragraph there's a  
02:14:40 20 sentence that begins, "Nicotine has been  
02:14:44 21 separated from solutions of tobacco extracts and  
02:14:46 22 the nicotine depleted solvent returned to the  
02:14:52 23 tobacco. Representative of such processes are  
02:14:54 24 those disclosed in U.S. patent numbers  
02:15:02 25 <sup>2,053,622</sup> ~~2,083,622~~?" Did you consult that patent?

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02:15:04 2 A. No, sir.

02:15:06 3 Q. Does the name Liebrich ring a bell?

02:15:06 4 A. No, sir.

02:15:08 5 Q. Did you consult the next patent,

02:15:14 6 <sup>802,487</sup>  
~~8,002,487?~~

02:15:14 7 A. No, sir.

02:15:16 8 Q. Does the name Wimmer ring a bell?

02:15:16 9 A. No, sir.

02:15:22 10 Q. Did you consult patent 2,805,667?

02:15:22 11 A. No, sir.

02:15:26 12 Q. Does the name von Bethman ring a

15:26 13 bell?

02:15:26 14 A. No, sir.

02:15:32 15 Q. Did you consult patent 3,046,997?

02:15:34 16 A. No.

02:15:38 17 Q. Does the name Hind ring a bell?

02:15:38 18 A. Only from this morning's discussion.

02:15:42 19 Q. And finally, did you consult patent

02:15:46 20 3,139,435?

02:15:48 21 A. No, sir.

02:15:50 22 Q. And does the name Staley ring a bell?

02:15:52 23 A. No, sir.

02:15:54 24 Q. Reading the description that's

15:56 25 contained in this patent, specifically "Nicotine

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02:16:00 2 has been separated from solutions of tobacco  
02:16:04 3 extracts and the nicotine depleted solvent  
02:16:06 4 returned to the tobacco," reading that  
02:16:10 5 description, do you think that you should have  
02:16:14 6 consulted those patents in making the  
02:16:16 7 determination that you did in paragraph 38?

02:16:18 8 MR. NUNLEY: Objection. He didn't  
02:16:20 9 say I've researched everywhere, he says I am  
02:16:22 10 unaware of any technology.

02:16:24 11 MR. ROGERS: Absolutely, and I'm just  
02:16:26 12 asking whether he thinks he should have consulted  
16:28 13 those patents in light of the description that's  
02:16:30 14 contained in this one.

02:16:30 15 A. No.

02:16:32 16 Q. And what's the basis for your  
02:16:32 17 answer?

02:16:34 18 MR. NUNLEY: Objection;  
02:16:38 19 argumentative. The question -- the affidavit  
02:16:40 20 says I am unaware. Are you saying that he had  
02:16:42 21 some obligation --

02:16:44 22 MR. ROGERS: No, I didn't use that  
02:16:46 23 word. I simply said does he think that he should  
02:16:46 24 have.

16:48 25 MR. NUNLEY: And he said no.

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02:16:50 2 Q. Okay. And I'm saying what's the  
02:16:52 3 basis for your answer. I don't think that's  
02:16:52 4 argumentative.

02:16:54 5 MR. NUNLEY: Well, I object. It is  
02:16:54 6 argumentative.

02:16:58 7 Q. Okay. What's the basis for your  
02:16:58 8 answer?

02:17:00 9 A. Since there was an R&D person that  
02:17:04 10 was present in that particular regard, if any of  
02:17:06 11 those patents had any applicability to the RL  
02:17:12 12 process I believe that would have come to light  
17:12 13 at that point.

02:17:18 14 Q. Because you were with Mr. Uhl who is  
02:17:20 15 in R&D?

02:17:20 16 A. Correct.

02:17:24 17 Q. And so you relied on Mr. Uhl's  
02:17:26 18 general knowledge as a member of the R&D  
02:17:26 19 department?

02:17:26 20 A. That's correct.

02:18:00 21 Q. If I can direct your attention to --  
02:18:02 22 yes, you can set that exhibit aside -- to  
02:18:12 23 paragraph 28 of your affidavit, it's on Page 13,  
02:18:18 24 and I'll just read it for the record: "I have  
02:18:20 25 been told that ABC contends that the separation

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of solubles and their recombination with base web that occurs in the RL process involves the use of 'extraneous' nicotine because the solubles in base web do not have a 'common origin.' That is not the case. Park 500 is continuously separating the solubles from the raw materials, is continuously processing fibers into base web, is continuously processing solubles into size and is continuously recombining the base web with the size to form the finished RL sheet. All of the nicotine that is found in the RL produced by Park 500 comes from the tobacco materials that are used to make the RL sheet. All of the tobacco solubles that are recombined with the base web comes from those same materials. And the solubles generated by the process are recombined solely with fibers derived from the materials that are used at the beginning of the RL process. Thus, the solubles and base web do have a common origin - the tobacco materials that are processed at Park 500."

Starting from a position of startup after you've shut down the plant, how long does it take in processing time to generate base web?

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02:20:02 2 A. Several hours, Alex. I don't  
02:20:02 3 remember the exact time.

02:20:08 4 Q. Could you say roughly?

02:20:10 5 MR. NUNLEY: More roughly than  
02:20:10 6 several hours?

02:20:12 7 MR. ROGERS: I wouldn't have asked it  
02:20:14 8 if I didn't mean anything more specific than  
02:20:16 9 several hours.

02:20:18 10 MR. NUNLEY: What do you want it down  
02:20:18 11 to, the minutes?

02:20:20 12 MR. ROGERS: No.

20:22 13 Q. Do you have any better sense than  
02:20:26 14 several hours? Three, four?

02:20:28 15 A. It would strictly be a guess. You  
02:20:32 16 have to build levels of the various tanks like  
02:20:34 17 the stock chest and the machine chest. That  
02:20:38 18 takes time. It's several hours. I can't give  
02:20:40 19 you a more precise number than that.

02:20:42 20 Q. And do you know how long in  
02:20:46 21 processing time it takes to process what you've  
02:20:50 22 described as size which is that which is applied  
02:20:50 23 to the base web?

02:20:54 24 A. Same answer. It's several hours to  
20:58 25 get to that point, but again, I can't remember an

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02:20:58 2 exact number.

02:21:00 3 Q. Do you know whether it's precisely  
02:21:04 4 the same, roughly the same amount -- I'm sorry,  
02:21:06 5 approximately the same amount of processing time  
02:21:10 6 to make the base web as it does take to make  
02:21:10 7 size?

02:21:14 8 A. My recollection is it takes longer to  
02:21:16 9 get the solubles portion through the system.

02:21:20 10 Q. Than the fibers to the base web?

02:21:20 11 A. Than the fiber portion, yes.

02:21:22 12 Q. So what happens, describe to me what  
21:28 13 happens after a startup situation in terms of  
02:21:32 14 making sure that there's actually size applied to  
02:21:36 15 the base web? Does the base web in a sense wait  
02:21:38 16 for the size or how does it work?

02:21:40 17 A. What you would have is a situation in  
02:21:42 18 which to get the paper machine up and running you  
02:21:48 19 would probably start feeding stock, fiber to the  
02:22:00 20 wire probably in the order of magnitude of an  
02:22:04 21 hour before the size would be ready to run to try  
02:22:06 22 and level out the paper machine, get the basis  
02:22:10 23 weight of the base web correct and so forth.

02:22:20 24 Q. Would you describe what you mean by  
22:20 25 feeding stock?

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02:22:22 2 A. You have stock that now you've --  
02:22:26 3 gotten the levels built up to where you've got an  
02:22:28 4 acceptable level of fiber in both the stock chest  
02:22:32 5 and the machine chest. You're not trying to fill  
02:22:34 6 those vessels. You've got some level. You don't  
02:22:38 7 want to start up and then instantaneously run  
02:22:42 8 out, right. So you built a level that's  
02:22:44 9 concomitant with keeping the process running on a  
02:22:46 10 continuous basis and then you start feeding that  
02:22:50 11 stock to the head box which is described --  
02:22:52 12 described in here which then feeds on to the  
02:22:56 13 wire, and you start that process through the rest  
02:23:00 14 of the sheet-forming process, forming eventually  
02:23:06 15 base web. And you probably do that, I mean if  
02:23:10 16 it's a great startup it might only take you a  
02:23:14 17 half an hour or 40 minutes to do that to get the  
02:23:18 18 machine running. If it's something goes wrong,  
02:23:22 19 there's a mechanical failure in some piece of  
02:23:22 20 equipment on the paper machine it could take  
02:23:24 21 several hours to get to that point.

02:23:30 22 Q. When you say to get to that point you  
02:23:32 23 mean the point at which you have base web?

02:23:32 24 A. Correct.

02:23:34 25 Q. And so if we take your example of

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02:23:36 2 what you call a great startup, what is that?

02:23:38 3 A. There's no mechanical problems,  
02:23:44 4 everything on the paper machine works exactly the  
02:23:44 5 way --

02:23:46 6 Q. I see. Is that a terminology that's  
02:23:48 7 used?

02:23:50 8 A. Yes, I'm sorry. That's colloquial.

02:23:52 9 Q. Okay. So from the time of startup to  
02:23:56 10 the time when you have base web, you say roughly  
02:23:58 11 40 minutes, half hour, 40 minutes?

02:24:02 12 A. Yeah, 40 minutes or so.

24:08 13 Q. Okay. Assuming we're in a great  
02:24:12 14 startup, how long between the time that you have  
02:24:16 15 that base web, how long is it between the time  
02:24:18 16 you have that base web and the time that you  
02:24:20 17 apply size to that base web?

02:24:22 18 A. Assuming again a completely cold  
02:24:32 19 startup, and again a guesstimate only, probably  
02:24:38 20 about an hour more, somewhere in the time frame  
02:24:40 21 of an hour and a half from the time you've  
02:24:48 22 started up. In other words, if you get to the  
02:24:52 23 machine and you're making base web and it's  
02:24:56 24 taking you only 40 minutes to get to that point,  
24:58 25 it's going to be another hour, approximately, to



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an hour and a half before you have size. Again, all things considered, everything goes okey-dokey, you build the levels that you're supposed to build in all of the tanks and so forth.

Q. And so returning to paragraph 28 of your affidavit it says in the beginning you've been told that. Who told you what follows in that sentence?

A. Counsel.

Q. And then at the end of the sentence you have in quotes a "common origin" and then you say "That is not the case." In order to reject the first sentence, what you've been told in the first sentence you have to have an understanding of what is meant by common origin, do you agree with that? You can't reject that which you don't know what it means?

MR. NUNLEY: Objection; argumentative.

MR. ROGERS: That one is argumentative.

MR. NUNLEY: Oh, thanks. So you withdraw it?

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02:26:24 2 MR. ROGERS: No.

02:26:24 3 MR. NUNLEY: You admit it's  
02:26:28 4 argumentative and you don't withdraw it?

02:26:28 5 MR. ROGERS: Let me rephrase the  
02:26:28 6 question.

02:26:30 7 Q. What did you understand the term  
02:26:36 8 common origin to mean as it was told to you and  
02:26:40 9 to which you've rejected in the second sentence  
02:26:40 10 of paragraph 28?

02:26:50 11 A. That they don't come from the same  
02:26:50 12 source.

02:26:52 13 Q. What do you mean by source?

02:26:54 14 A. That they don't come from the same  
02:26:56 15 tobacco raw materials.

02:27:08 16 Q. Let's take batch 1 after a shutdown.  
02:27:10 17 You extract the solubles from the fiber in batch  
02:27:16 18 1. Do the solubles that were derived from batch  
02:27:22 19 1 get reapplied to the fibers that were derived  
02:27:22 20 in batch 1?

02:27:30 21 A. You have to look at Park 500 as a  
02:27:32 22 continuous process. The fact that you start with  
02:27:38 23 a batch in the pulper, every process has to have  
02:27:42 24 an origin. That's the origin, but as it says in  
02:27:46 25 the affidavit it's a continuous process of <sup>separating</sup> ~~saving~~

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those things. So is it an instantaneous point in time? To carry it to an extreme, okay, without making it seem overly simplistic, if I have a stem that I'm extracting in the pulper, right, you started in the pulper, the stem goes through the process, it goes on to the stock chest, the machine chest, et cetera, and the solubles portion of that stem goes on an instantaneous basis, is that your question, that the solubles from that get returned to exactly that piece of fiber, the answer is no.

Q. Okay. How about the first batch after a startup?

MR. NUNLEY: How about the first batch, what's the question?

Q. Do the solubles that are extracted from the first batch get applied to the fiber that was generated from that first batch?

A. It would depend on a whole variety of factors.

Q. What factors?

A. How long did you run base web before you started applying the size.

Q. What do you mean by running base web?

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02:29:02 2 A. We just went through that. When  
02:29:04 3 you're starting the paper machine up and you get  
02:29:06 4 the paper machine lined out, now you've got, when  
02:29:08 5 you have size available now you apply it to the  
02:29:12 6 sheet. You've obviously been running fiber for a  
02:29:16 7 longer period of time than applying the size to  
02:29:16 8 it.

02:29:38 9 There's also an exception to that  
02:29:40 10 that's referenced later in the affidavit.

02:29:44 11 Q. What exception are you referring to?

02:29:48 12 A. If you had stored size over the  
29:52 13 shutdown period to aid in starting up the line.

02:29:54 14 Q. And in that situation then what would  
02:29:56 15 happen?

02:29:58 16 A. You'd put that stored material that  
02:30:02 17 had been there for several days on to that base  
02:30:04 18 web to facilitate the startup.

02:30:12 19 Q. So you can store size for several  
02:30:12 20 days?

02:30:18 21 A. It describes that in here, yes.

02:30:20 22 Q. That's your testimony, you can store  
02:30:22 23 size. How long can you store it?

02:30:22 24 A. It's actually not size that's stored,  
30:26 25 it's DNCEL. Let me clarify that.

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02:30:28 2 Q. And what's the maximum amount of time  
02:30:30 3 that you can store DNCEL?

02:30:36 4 A. It varies, but it's only up to  
02:30:36 5 several days, possibly a week.

02:30:46 6 Q. And then after that storage time,  
02:30:50 7 assuming the DNCEL hasn't spoiled, it is then  
02:30:54 8 used to make size?

02:30:54 9 A. Yes.

02:31:00 10 Q. And then that size that has been  
02:31:04 11 stored, let's say, for two days, that size is  
02:31:06 12 then applied to the new base web that's coming  
02:31:08 13 through?

02:31:10 14 MR. NUNLEY: Size is not stored,  
02:31:12 15 Alex. DNCEL is stored.

02:31:16 16 Q. Okay, let's back up. The DNCEL is  
02:31:18 17 stored for, let's say, two days. Generally that  
02:31:20 18 period of time it's still usable?

02:31:24 19 A. That's not a normal shutdown, Alex.

02:31:26 20 Q. Okay, but let's take this example. A  
02:31:28 21 two-day storage, your understanding is you could  
02:31:30 22 still use that DNCEL?

02:31:30 23 A. For startup.

02:31:36 24 Q. Okay. And you've got the DNCEL in a  
02:31:38 25 tank being stored?

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02:31:38 2 A. Yes, sir.

02:31:42 3 Q. Okay. And how long after startup is  
02:31:50 4 the time for that DNCEL to be turned into size?

02:31:54 5 A. That can probably be done in an hour.

02:31:56 6 Q. Okay. And then that size is then  
02:32:00 7 applied to the new base web that's coming  
02:32:00 8 through?

02:32:02 9 A. Correct.

02:32:06 10 Q. And the solubles that were generated  
02:32:08 11 to produce the DNCEL that was stored for two  
02:32:16 12 days, did they come -- would they come from a  
02:32:18 13 different batch of raw materials than the new  
02:32:18 14 base web that's coming through?

02:32:22 15 A. Certainly, yes.

02:32:44 16 Q. Let's turn to paragraph 30. In  
02:32:46 17 paragraph 30 you state the following: "I've been  
02:32:48 18 told that ABC asserts that Philip Morris  
02:32:52 19 'commonly adds' solubles from one line to  
02:32:56 20 another line in order to compensate for natural  
02:33:00 21 variations in the raw tobacco. That again is not  
02:33:04 22 true. On rare occasions it will be necessary to  
02:33:06 23 transfer some of the solubles from one line at  
02:33:10 24 Park 500 to another line. This transfer  
02:33:12 25 typically occurs because there has been a problem

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in the process that has caused solubles to be discarded on one of the lines, such as the failure of an evaporator or a press that has become clogged. This transfer, moreover, is not at all 'common' and in fact very small quantities of solubles are transferred relative to the total amount of production at Park 500."

When you use the word rare in sentence 3, what conception of time, or rather what conception did you have as to the number of instances in which solubles are transferred from one line to another?

A. It happens infrequently. I'm not sure I can give you a number.

Q. When you say --

A. That goes with rare, infrequently.

Q. Can you be more specific?

A. And give you an actual number? Not off the top of my head. It is not the normal way of operating the plant.

Q. And when you say in the final sentence, "This transfer, moreover, is not at all 'common' and in fact very small quantities of solubles are transferred relative to the total

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02:34:42 2 amount of production," do you know what the  
02:34:46 3 quantities of solubles that are transferred?

02:34:50 4 A. In forms of gallons you mean or --

02:34:52 5 Q. Did you have a volume in mind when  
02:34:54 6 you said very small quantities?

02:34:58 7 A. Again, infrequently, again, compared  
02:35:00 8 to the total amount of production at Park.

02:35:02 9 Q. What do you mean by the total amount  
02:35:04 10 of production? On a daily basis?

02:35:08 11 A. You're producing 150 million pounds a  
02:35:12 12 year, roughly, round numbers. That is not the  
35:18 13 normal method of producing a product. So I would  
02:35:20 14 say it would be a very small percentage of 150  
02:35:20 15 million pounds.

02:35:24 16 Q. I see. So your comparison in  
02:35:30 17 paragraph 30 is taking the quantities of, rough  
02:35:32 18 estimates of the quantities of solubles that have  
02:35:38 19 been transferred with the annual production of  
02:35:40 20 finished sheet at Park 500, that's the  
02:35:40 21 comparison?

02:35:44 22 A. Correct, to the total -- total --  
02:35:46 23 total volume of product produced at Park.

02:35:50 24 Q. On an annual basis?

35:52 25 A. Yes.

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02:36:08 2 Q. And you describe in the fourth  
02:36:14 3 sentence a scenario that would trigger this type  
02:36:16 4 of a transfer, and I'll read it, "This transfer  
02:36:18 5 typically occurs because there's been a problem  
02:36:22 6 in the process that has caused solubles to be  
02:36:24 7 discarded on one of the lines, such as the  
02:36:26 8 failure of an evaporator or a press that has  
02:36:30 9 become clogged." Is that the only reason you  
02:36:34 10 know of for a transfer of liquor between size?  
02:36:36 11 And by only I mean a problem in the process that  
02:36:40 12 has caused solubles to be discarded on one of the  
02:36:40 13 lines?

02:36:54 14 A. I can't think of another example  
02:36:54 15 sitting here.

02:37:10 16 Q. What if the soluble content of the  
02:37:16 17 DNCEL on one line was too low, meaning below  
02:37:20 18 whatever the target soluble level was, would that  
02:37:22 19 be a reason for transferring liquor to that  
02:37:24 20 line?

02:37:26 21 MR. NUNLEY: Objection. Based on his  
02:37:28 22 prior testimony that calls for speculation.

02:37:30 23 MR. ROGERS: I disagree. He said  
02:37:32 24 that sitting here he couldn't think of another  
02:37:36 25 example. I posed one and I want to see if that

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02:37:40 2 brings to mind another example that he hadn't  
02:37:44 3 thought of when he gave the answer "I can't think  
02:37:44 4 of another example sitting here."

02:37:48 5 MR. NUNLEY: But you pose it in the  
02:37:52 6 framework of a hypothetical. You don't say has  
02:37:58 7 that been a reason for transfer. So on that  
02:38:00 8 basis it calls for speculation.

02:38:02 9 MR. ROGERS: I'll ask your question.

02:38:04 10 Q. Do you know whether liquor has ever  
02:38:08 11 been -- strike that. Do you know whether DNCEL  
02:38:10 12 has ever been transferred from one line to  
38:14 13 another because the line that was receiving the  
02:38:20 14 transfer had low soluble levels in its DNCEL?  
02:38:22 15 And by low I mean below the target level?

02:38:28 16 A. Not that I'm aware of. Not that I  
02:38:28 17 can recall.

02:38:44 18 Q. Do you know of an instance in which  
02:38:46 19 DNCEL was transferred from one line to another  
02:38:54 20 not because solubles had been discarded on one  
02:38:58 21 line, but simply because an insufficient quantity  
02:39:00 22 of solubles had been generated?

02:39:08 23 A. That may have happened. If one of  
02:39:10 24 the press lines went down, that's a possibility.

39:18 25 Q. What if -- do you know of an

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02:39:22 2 occurrence when the soluble content of the dry  
02:39:26 3 raw materials was sufficiently low that the  
02:39:30 4 resulting DNCEL from those dry raw materials did  
02:39:34 5 not have the desired level of solubles?

02:39:36 6 A. I'm also unaware of that ever  
02:39:38 7 happening or don't recall that ever happening.

02:39:42 8 Q. Do you think James Narron as the  
02:39:44 9 plant manager of Park 500 would be in a position  
02:39:48 10 to know that?

02:39:50 11 MR. NUNLEY: Speculation.

02:39:50 12 A. I'm not sure.

40:04 13 Q. Would you rely on Mr. Narron to tell  
02:40:10 14 you something like that?

02:40:12 15 MR. NUNLEY: Objection as to form.

02:40:22 16 A. I think you have to understand how  
02:40:24 17 the plant operates in that particular regard.

02:40:30 18 MR. NUNLEY: His question is, John,  
02:40:34 19 if Mr. Narron told you that would you accept that  
02:40:36 20 representation from Mr. Narron?

02:40:40 21 A. If Jimmy told me that would I accept  
02:40:40 22 that?

02:40:40 23 Q. Sure.

02:41:02 24 A. Sure.

11:04 25 MR. ROGERS: Would you mark this as

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Exhibit 15.

(Whitman Exhibit 15 for identification, two-page document, production numbers 2025321065 and 2025321066 and PA 127981 and PA 127982.)

Q. You've just been handed what's been marked as Whitman Exhibit 15, which is a two-page document. The production numbers are 2025321065 through 2025321066. The corresponding defendants' production numbers are PA 127981 to PA 127982.

Have you ever seen this document before?

MR. NUNLEY: For the record, it's stamped confidential.

A. Yes, it's familiar to me.

Q. When did you have an occasion to see this document?

A. I don't really remember, Alex.

Q. Would it have been the last month or year?

A. It may have been at the time that it was generated. I'm really not sure.

Q. Looking at the dates of the

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02:42:14 2 documented transfers, does that help you locate  
02:42:16 3 the point in time in which you saw this document?

02:42:24 4 A. Like I say, it could have been at the  
02:42:26 5 time that it occurred.

02:42:26 6 Q. You don't know?

02:42:28 7 A. Yeah, I really don't remember.

02:42:30 8 Q. And looking at paragraph 30 of your  
02:42:36 9 affidavit, again sentence 3, when you say "On the  
02:42:42 10 rare occasions" and then again paragraph, the  
02:42:46 11 last sentence of that paragraph, "Very small  
02:42:50 12 quantities of solubles are transferred," what did  
02:43:00 13 you rely on in drafting paragraph 30 of your  
02:43:00 14 affidavit?

02:43:02 15 A. Just my basic process knowledge and  
02:43:04 16 basic experience at Park.

02:43:06 17 Q. Did you look at all at what's been  
02:43:14 18 marked as Whitman Exhibit 15?

02:43:22 19 A. I can't recall if I've seen that in  
02:43:24 20 the last couple of weeks, really.

02:43:26 21 Q. Okay. And turning to the second page  
02:43:30 22 of Whitman Exhibit 15 which is documented liquor  
02:43:36 23 transfers from line 1 to lines 2 and 3, appears  
02:43:40 24 to be liquor transfers between the dates of  
02:43:48 25 October 26th, 1992 and May 20th, 1993, roughly a

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seven-month period. And there appear to be, I haven't counted them, but there appear to be somewhere around 35 or 40 documented liquor transfers on this page from line 1 to lines 2 and 3 amounting to a total gallon level of 34,708 gallons. Looking at that data in front of you in Whitman Exhibit 15, does that change anything in paragraph 30 of your affidavit?

A. No, it doesn't.

Q. Why not?

A. Because if you take a look, Alex, at the total amount of pounds there, that's 163,000, round numbers, of pounds of solubles. That's a seven and a half month time frame. The plant probably produced somewhere in the neighborhood of 80 to 85 million pounds of product in that regard. In my opinion, 163,000 is a minor part of that.

Q. And looking at the data on that sheet, let's stay on that second page, and thinking of that time frame October 26th, 1992 to May 20th, 1993, do you know specifically the reason for any of these transfers?

A. Honestly I don't. No, I do not.

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02:45:46 2 Q. So you wouldn't know whether they're  
02:45:50 3 all attributable to solubles being discarded on  
02:45:52 4 either lines 2 or 3?

02:45:56 5 A. Correct, without having further  
02:45:56 6 information.

02:46:02 7 Q. But the only scenarios in which you  
02:46:04 8 know of liquor transfers are described in  
02:46:06 9 paragraph 30 of your affidavit?

02:46:06 10 A. Yes, sir.

02:47:20 11 Q. Have you seen any documents that look  
02:47:24 12 like Whitman Exhibit 15, other time periods of  
02:47:28 13 documented liquor transfers, or is this the only  
02:47:30 14 such document that you've seen?

02:47:34 15 A. I can't really recall.

02:47:38 16 Q. Do you know whether documents  
02:47:42 17 containing information on documented liquor  
02:47:44 18 transfers are generated on a regular basis?

02:47:52 19 A. I really don't know.

02:47:54 20 Q. Do you know who's in charge today of  
02:47:58 21 overseeing liquor transfers when they occur?

02:48:04 22 A. It would normally either be the shift  
02:48:10 23 coordinator or the supervisors on the respective  
02:48:10 24 lines.

02:48:14 25 Q. And as the general manager of the

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02:48:16 2 Richmond processing plants, do you receive

02:48:22 3 documents that record liquor transfers?

02:48:26 4 A. No, sir, I do not.

02:48:36 5 MR. ROGERS: Would you mark this as

02:48:52 6 Exhibit 16.

7 (Whitman Exhibit 16 for  
8 identification, two-page document, production  
9 numbers 2024411266 and 2024411267 and PA 198696  
10 and PA 198697.)

02:49:06 11 Q. You've just been handed what's been  
02:49:28 12 marked as Whitman Exhibit 16, which is a two-page  
13 document, production numbers 2024411266 through  
14 2024411267. Defendants' production numbers are  
02:49:30 15 PA 198696 through PA 198697. This appears to be  
02:49:36 16 a document from L.M. Alexander to Mr. J.M.  
02:49:36 17 Whitman. The date on the document is January  
02:49:40 18 15th, 1990. Do you recall receiving --

02:49:42 19 A. I'm sorry, that's not the date on  
02:49:42 20 what I have.

02:49:54 21 Q. I apologize.

02:49:54 22 A. No problem.

02:50:04 23 MR. ROGERS: Chip, do you have the  
02:50:06 24 October 16th date on yours?

02:50:06 25 MR. NUNLEY: Yes.



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02:50:08 2 MR. ROGERS: I apologize.

02:50:08 3 MR. NUNLEY: For the record I note  
02:50:10 4 that it's designated as trade secret.

02:50:12 5 MR. ROGERS: Let me read again the  
02:50:14 6 production numbers because I had a different  
02:50:16 7 document in front of me.

02:50:22 8 Q. The production numbers are 2024411321  
02:50:28 9 to 2024411322 and defendants' numbers are PA  
02:50:34 10 198748 to PA 198749. The date of the document is  
02:50:38 11 October 16th, 1989. I appreciate your calling  
02:50:40 12 that to my immediate attention.

50:42 13 A. No problem.

02:50:42 14 Q. Do you recall receiving this  
02:50:42 15 document?

02:50:48 16 A. The specific document, no, but did I  
02:50:50 17 get a weekly production report during that time  
02:50:52 18 period? Yes.

02:50:54 19 Q. And during this time period am I  
02:50:56 20 right that you were the site manager at Park 500?

02:50:56 21 A. That is correct.

02:51:00 22 Q. And who is L.M. Alexander?

02:51:06 23 A. Linda Alexander was the -- yeah, at  
02:51:10 24 that time was the secretary to the operations  
51:10 25 manager.

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02:51:18 2 Q. And at the time who was the  
02:51:20 3 operations manager, October of 1989?

02:51:38 4 A. I need a minute to think. Tom White.

02:51:40 5 Q. Is he still the operations manager?

02:51:42 6 A. No, he is not.

02:51:48 7 Q. If I can direct your attention to  
02:51:52 8 two-thirds of the way down this first page, right  
02:51:56 9 under the words line 1 there appears to be  
02:51:58 10 entries for specific dates. I guess this is the  
02:52:04 11 week preceding in terms of -- this is the  
02:52:08 12 production report, rather for the week ending  
52:12 13 October 15th. On October 9th, on line 1 it says  
02:52:16 14 "3.6" and then there's a dash, "ran base web to  
02:52:20 15 generate liquor." Does the 3.6 refer to 3.6  
02:52:20 16 hours?

02:52:24 17 A. My recollection is that's correct.  
02:52:26 18 It's hours of downtime.

02:52:28 19 Q. Would you describe what you mean by  
02:52:30 20 hours of downtime?

02:52:34 21 A. The line was not producing product at  
02:52:40 22 that point in time is my recollection of what  
02:52:40 23 that is.

02:52:46 24 Q. So for 3.6 hours on October 9th no  
52:52 25 finished RL sheet was coming off line 1?

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02:52:58 2 A. That's my interpretation of this  
02:52:58 3 data, yes.

02:53:04 4 Q. Okay. For those 3.6 hours is it  
02:53:12 5 correct that Philip Morris ran base web to  
02:53:14 6 generate liquor?

02:53:22 7 A. My recollection is we ran base web in  
02:53:28 8 order to build the liquor levels to specify the  
02:53:28 9 levels.

02:53:36 10 Q. And what happens to the base web  
02:53:38 11 that's being "run" at this time?

02:53:40 12 A. This time period that this document  
02:53:44 13 was generated refers also to a specific part of  
02:53:48 14 the affidavit in which there were periods during  
02:53:50 15 that time when we were putting in the total  
02:53:52 16 quality management system and we were trying to  
02:54:00 17 reduce the variation, and in my opinion, we took  
02:54:02 18 that a little bit too far. We tried to get the  
02:54:06 19 variation in the finished product down to a very  
02:54:10 20 low level. So you needed very specific  
02:54:14 21 quantities of liquor to be able to accomplish  
02:54:18 22 that. We were not accepting the wide range that  
02:54:20 23 you see in the affidavit relative to the finished  
02:54:30 24 sheet soluble specification. So at those points  
02:54:32 25 in time that we couldn't hit a very narrow range,

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02:54:34 2 they were in base web until they got the levels  
02:54:36 3 up to a point that would permit them to do that.

02:54:40 4 Q. Your description in the affidavit of  
02:54:44 5 a range between 41 percent and 49.5 percent you  
02:54:54 6 would describe that as a wide range?

02:54:56 7 A. I'd characterize that as the  
02:54:56 8 specification range.

02:55:00 9 Q. And would you say that specification  
02:55:02 10 range is wide or narrow?

02:55:08 11 A. That's the accepted range. What we  
02:55:10 12 were trying to do at the time with our newly  
02:55:14 13 implemented <sup>SPC</sup>~~SFC~~ system was to try to control that  
02:55:14 14 within a very narrow range.

02:55:20 15 Q. How narrow?

02:55:22 16 A. Instead of the plus or minus  
02:55:24 17 approximately 4 percent that's in there, my  
02:55:28 18 recollection, Alex, tells me we were shooting for  
02:55:30 19 somewhere plus or minus one.

02:55:32 20 Q. Were you able to achieve that?

02:55:34 21 A. Not without causing significant  
02:55:36 22 operational problems.

02:55:40 23 Q. And to what are you referring  
02:55:42 24 specifically when you say specific operational  
02:55:44 25 problems?

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02:55:46 2 A. Because the liquid levels fluctuate  
02:55:52 3 in a continuous process, in order to keep it that  
02:55:54 4 very narrow range there were times when there  
02:55:58 5 were inadequate amounts of solubles available to  
02:56:02 6 do that and we took the alternative of running  
02:56:04 7 base web till the levels got back up.

02:56:12 8 Q. And the base web that is run during  
02:56:16 9 this time, excuse me, is then returned to the  
02:56:18 10 pulper as broke?

02:56:22 11 A. That's the general way that the plant  
02:56:26 12 runs. At times during this time frame there was  
56:28 13 sufficient base web generated that that would  
02:56:32 14 have caused even more process variation, so that  
02:56:36 15 product would have been trashed.

02:56:44 16 Q. And would you -- is it your  
02:56:48 17 testimony, earlier you said "Not without" -- I  
02:56:52 18 asked you were you able to achieve the narrower  
02:56:54 19 range that you were describing and you said, "Not  
02:56:56 20 without causing significant operational  
02:57:00 21 problems." Is this entry on October 9th running  
02:57:02 22 base web to generate liquor, would you describe  
02:57:04 23 that as a significant operational problem?

02:57:06 24 A. Yes, I would.

57:08 25 Q. And why would you describe it as

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such?

A. Because you're creating downtime which is a significant operational problem.

Q. Is this operation, running base web to generate liquor, does it also have the effect of lowering yield?

A. Yes, it would.

Q. How would it have that effect?

A. You're sending tobacco materials through from the start of the process but you're not getting finished product out at the end of the process. Therefore, the amount of pounds of finished good material would be lower, the yield would be lower.

Q. How often is a yield calculation made?

A. It's reported on a monthly basis.

Q. Do you know whether yield's measured every day and then placed in that monthly report?

A. I really don't recall.

Q. Is all the base web that was run during this time returned to the pulper?

A. No, my recollection is that some of that material was actually discarded.

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02:58:42 2 Q. And by discarded you mean land  
02:58:42 3 filled?

02:58:42 4 A. Yes.

02:58:46 5 Q. And so there's where you would have  
02:58:48 6 the reduction in yield?

02:58:48 7 A. That's correct.

02:58:56 8 Q. Roughly how many times, instances,  
02:59:02 9 not hours, but instances can you recall when the  
02:59:06 10 plant was not producing -- a line was not  
02:59:08 11 producing finished sheet because you were running  
02:59:10 12 base web to generate liquor?

59:12 13 A. I really can't give you a number for  
02:59:16 14 that. It was frequent enough that from an  
02:59:20 15 operational standpoint it convinced us that it  
02:59:24 16 was not the proper control technology to be  
02:59:28 17 using, that we should go back to accepting the  
02:59:30 18 full range that's listed in the affidavit.

02:59:34 19 Q. Okay. And so the record is clear on  
02:59:40 20 this, during this 3.6 hours raw materials are  
02:59:44 21 inserted into the pulper, the solubles are  
02:59:46 22 extracted from the fibrous material; is that  
23 correct?

02:59:48 24 A. The process is the same, right.

59:50 25 Q. Everything is the same except that

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the fibrous material that is ultimately made into  
base web is discarded?

MR. NUNLEY: No, objection. He said  
at times it <sup>goes</sup> ~~going~~ to the broke pulper, at times  
it's discarded and he doesn't know one way or the  
other with respect to this 3.6 hours.

Q. Okay. But you did testify earlier  
that you knew of instances when it was discarded  
and I want to talk about those instances, whether  
it was October 9th on line 1 or some other  
instance that you have in mind in which that  
happened.

A. Okay.

Q. Just so I understand how the process  
worked. Everything worked the same, the  
insertion of raw materials into the pulper and  
the processing, the only thing that was different  
was at the end of the line the base web that was  
generated from those dry raw materials was  
discarded and the liquor that was generated was  
stored in a tank; is that correct?

A. As long as it's with the stipulation  
that some of it would have been discarded,  
right. At times it was, at times it would have



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been fed back to the broke pulper.

Q. Right. I'm only asking about whatever instance you remember when base web was landfilled?

A. Yeah, there were times when that happened.

Q. And the liquor was then stored in the DNCEL storage tank?

A. The process -- the other parts of the process would have been exactly the same, yes.

Q. What was the time frame when you were pursuing a narrower range in the solubles, do you recall?

A. I can't give you the specific dates, I really don't recall, but I want to tell you it was basically the late third quarter, early fourth quarter of 1989, but that's really from -- from memory banks.

Q. And do you remember what that narrow range was? If the range today as you described it is roughly 4, 4.5, plus or minus, what do you recall that narrow range being?

A. My recollection was it was plus or minus one.

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03:02:08 2 Q. Do you know who made the decision to  
03:02:08 3 try to pursue a narrow range?

03:02:14 4 A. I want to -- yeah, it was Bill  
03:02:16 5 Poorbaugh and Tom White.

03:02:20 6 Q. And who made the decision to  
03:02:24 7 discontinue the effort to achieve that narrow  
03:02:26 8 range?

03:02:26 9 A. I did.

03:02:28 10 Q. And what were the grounds upon which  
03:02:30 11 you made that decision?

03:02:34 12 A. There was no reason from a  
02:36 13 specifications standpoint to keep on continuing  
03:02:42 14 to achieve what I would consider to be a more  
03:02:46 15 idealistic finished product at the expense of  
03:02:48 16 reasonable business operations when that  
03:02:52 17 acceptable specification range was the 8 percent,  
03:02:54 18 8.5 percent that you just referred to.

03:03:00 19 Q. And when you just said "There was no  
03:03:04 20 reason from a specification standpoint," what did  
03:03:04 21 you mean?

03:03:06 22 A. That you have that range of 41.5  
03:03:12 23 to -- excuse me, 41 to 49.5, 42 to 50.5, those  
03:03:14 24 are the acceptable -- that is the acceptable  
03:16 25 specification for the two RL products.

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03:03:22 2 Q. And so you're saying from a business  
03:03:24 3 standpoint it wasn't worth whatever the expense  
03:03:28 4 was to you in making this cost/benefit analysis,  
03:03:30 5 it wasn't worth the extra expense to achieve a  
03:03:32 6 more narrow range?

03:03:34 7 A. That's correct, because the wider  
03:03:34 8 range was subjectively acceptable.

03:03:42 9 Q. And the expense from the business  
03:03:44 10 standpoint you measured in yield loss?

03:03:50 11 A. Loss of productivity, in downtime and  
03:03:54 12 in yield loss because obviously, when you're not  
03:56 13 running finished sheet you're not making finished  
03:04:00 14 product, that's a loss in productivity as well as  
03:04:00 15 a loss in yield.

03:04:04 16 Q. What's the difference between  
03:04:04 17 productivity and yield loss?

03:04:08 18 A. Okay. If I have 3.6 hours downtime,  
03:04:10 19 we've already discussed the yield, I think,  
03:04:16 20 right, so if I have 3.6 hours of downtime and I  
03:04:20 21 could have been making acceptable finished  
03:04:24 22 product at the given production rate, whatever  
03:04:28 23 that happens to be, then I've just lost the  
03:04:30 24 opportunity to make 3.6 hours of acceptable  
04:34 25 finished product. So that's the other cost

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that's associated with that. It's not just a yield loss.

Q. I see. If you'll turn the page, the first entry on the top under line 2 for October 9th, "2.2 base web to packing, no DN." What do you understand that to mean?

A. It's basically the same situation as the listing on October the 9th on line 1.

Q. What does the expression base web to packing mean?

A. They would have sent the base web directly to the packers, the same place that we would send finished sheet to. And my interpretation of that would be that they sent it there strictly from the ease of handling standpoint.

Q. And where would it go from the place --

A. From the packers.

Q. From the packers?

A. From the packers it could go to either place, back to the broke pulper or to landfill.

Q. When we talked yesterday about broke

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03:06:00 2 that includes the base web that's referenced in  
03:06:02 3 this document, your understanding of this base  
03:06:08 4 web that was generated on these -- on this date,  
03:06:10 5 that would qualify in your mind as broke?

03:06:12 6 A. Yes, sir.

03:06:18 7 Q. And any sheet, any finished sheet  
03:06:22 8 that didn't meet the specification range would  
03:06:24 9 then also qualify as broke?

03:06:28 10 A. Only if it's outside certain limits.

03:06:32 11 Q. And by certain limits do you mean the  
03:06:32 12 range that's provided in your affidavit?

03:06:38 13 A. No, not -- could; might not. Let me  
03:06:48 14 see if I can clarify it for you. And it's hard  
03:06:54 15 without having the exact numbers. But let me  
03:06:58 16 give you a for instance and use it only in that  
03:07:02 17 particular vein, please. Let's say that the  
03:07:16 18 lower solubles limit of 41 -- that's a bad  
03:07:20 19 example. I'm trying to think of something with a  
03:07:24 20 very tight control range. Let's take moisture  
03:07:30 21 content. Let's say that the specified moisture  
03:07:34 22 content is 14 percent plus or minus 1.5. I'm  
03:07:38 23 using it strictly as an example. Please don't  
03:07:40 24 take the numbers as an absolute.

03:07:40 25 Q. Okay.

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03:07:44 2 A. If it falls outside of that range of  
03:07:50 3 14 plus or minus 1.5, if it's outside of that  
03:07:58 4 range by within 1 percent, in other words, 14  
03:08:08 5 plus 1.5 would be 15.5, if it's within 15.5 to  
03:08:12 6 16.5 percent, we would blend that material back  
03:08:16 7 in with acceptable product when the moisture  
03:08:20 8 content was running on the low side. If it's  
03:08:22 9 outside, however, of that range, outside of that  
03:08:32 10 14, 15.5, 16.5, if it's greater than 16.5 then  
03:08:32 11 that would go to broke, yes.

03:08:36 12 Q. And that's regardless of the soluble  
08:38 13 content of that sheet?

03:08:42 14 A. Correct. Each individual parameter  
03:08:44 15 has its own limits.

03:08:46 16 Q. So the soluble content could be dead  
03:08:50 17 on in terms of the target range and because of  
03:08:52 18 this --

03:08:54 19 A. Moisture content.

03:08:56 20 Q. -- moisture content issue that  
03:09:00 21 paper rather <sup>that</sup> ~~than~~ finished sheet would go back to  
03:09:00 22 the pulper?

03:09:04 23 A. That's -- yeah, absolutely possible,  
03:09:06 24 and each one of those parameters has its own  
09:06 25 specified range.

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03:09:12 2 Q. Okay. So broke would include  
03:09:14 3 finished sheet that has a soluble content outside  
03:09:16 4 the target range?

03:09:16 5 A. Could, could.

03:09:20 6 Q. Broke could include finished sheet  
03:09:24 7 that has a moisture level outside the target  
03:09:30 8 range. What other parameters would have to be --  
03:09:32 9 any other parameters that would render finished  
03:09:34 10 sheet broke?

03:09:38 11 A. Any of the other humectants, flavor,  
03:09:40 12 additives or preservatives.

09:46 13 Q. How about the alkaloid content?

03:09:50 14 A. No, don't measure the alkaloid  
03:09:50 15 content.

03:09:54 16 Q. I showed you a document that I marked  
03:09:58 17 as an exhibit yesterday that measured alkaloid  
03:10:04 18 content of RLB and RLTC. Did you understand that  
03:10:08 19 to be a measurement of the alkaloid content of  
03:10:08 20 the finished sheet?

03:10:12 21 A. Sure, but it's not a routine  
03:10:16 22 analytical test done by the Park 500 QA  
03:10:28 23 laboratory. It's not one of the specifications.

03:10:30 24 Q. I see, so when you said earlier no,  
10:34 25 don't measure the alkaloid content, you were

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referring to Park 500 doesn't measure the  
alkaloid content?

A. When we were talking about things  
that you asked me the question on whether I would  
reject or accept sheet on that particular basis  
and that's not one of the analytical tests  
performed at Park 500. It's not one of the  
specifications for the finished sheet at Park  
500.

Q. So you wouldn't know then whether  
your finished sheet had an alkaloid content  
within the expected range that you identified  
yesterday of roughly 1.0 to 1.3?

MR. NUNLEY: Well, objection to the  
extent there's any attempt to correlate "expected  
range" to process specifications. He testified  
yesterday about what he would expect to see in  
finished sheet. It's never been identified as a  
process spec.

MR. ROGERS: I understand that.

Q. You said yesterday the expected range  
was 1.0 to 1.3. And now you said today that at  
Park 500 you don't test the alkaloid content of  
finished sheet. Are you aware of any time in



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03:11:50 2 which the alkaloid content of finished sheet was  
03:11:52 3 tested by Park 500?

03:11:56 4 A. No, I'm not.

03:12:00 5 Q. So my question to you is because you  
03:12:04 6 don't test the alkaloid content of the finished  
03:12:08 7 sheet you wouldn't know whether the alkaloid  
03:12:14 8 content of the finished sheet on a given day was,  
03:12:16 9 say, 1.5?

03:12:18 10 A. No, I would have no idea of that.

03:12:20 11 Q. Nor would you know if the finished  
03:12:24 12 sheet on one given day had an alkaloid content of  
12:26 13 .5?

03:12:28 14 A. No, I would not.

03:12:32 15 MR. ROGERS: Why don't we take five  
03:12:32 16 minutes.

03:12:32 17 THE WITNESS: Good idea.

03:12:34 18 THE VIDEO OPERATOR: We're going off  
03:12:38 19 the record. The time on the screen is 3:12:46.  
03:25:36 20 This ends videotape number 7.

03:25:40 21 (A recess was taken.)

03:25:52 22 THE VIDEO OPERATOR: This is  
03:25:54 23 videotape number 8, the continuation of the  
03:26:00 24 deposition of John Whitman. Today is August  
26:04 25 15th, 1995. The time on the screen is 3:26:15.

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You're on the record.

Q. Earlier today, Mr. Whitman, I made reference to your testimony from yesterday about a tobacco extract in 1976 that was used during a 30-day production cycle. I promised you I'd locate the cite and I have and I want to just come back to that briefly. It's Page 90 to 91 of your testimony. I asked you on line 14 of Page 90: "Do you know whether Philip Morris has ever purchased tobacco extract that contains nicotine from an outside supplier?" Your answer is "One, one occasion." My question is "What's the occasion that you're aware of?" Your answer was "There was a tobacco extract the chemical nature of I really don't know anything about that was used in a 30-day production cycle at Park before I ever transferred down there."

Q. And when you say one occasion, do you mean one single purchase?

A. Oh, I can't answer the question from a purchasing standpoint, only from a production standpoint.

Q. And can you recall roughly when that 30-day production cycle may have been?

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"A. I want to tell you it was 1976, but again, I wasn't there at the time that it was produced so that's a real guess."

Q: How did you know about this 30-day production cycle in which a tobacco extract that contained nicotine was used in production at Park 500?

A. I know that a tobacco extract was used. Again, I would refer to you that I don't know what the chemical composition of that was. But going back to the time period in question, there were two sources that I <sup>learned of</sup> ~~went into~~ that from. The first one would have been at the time that I was at R&D and we were doing filling power studies on RL and then the other time would have been in reviewing inventory figures on RL materials after I did transfer down to Park 500.

Q. The issue of a tobacco extract in RL came up in the context of what you call "filling power studies"?

A. Yes.

Q. Do I have that right?

A. Yes.

Q. What's a filling power study?

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03:29:00 2 A. It's -- I'm trying to think how to  
03:29:04 3 explain it without sounding too technical. It's  
03:29:06 4 what the ability of the specific component would  
03:29:08 5 have to fill a cigarette rod.

03:29:16 6 Q. And so the presence of a tobacco  
03:29:20 7 extract would affect --

03:29:20 8 A. No, it had nothing --

03:29:22 9 MR. NUNLEY: John, let him finish.

03:29:26 10 A. Excuse me. Rephrase.

03:29:28 11 Q. So the presence of a tobacco extract  
03:29:34 12 would affect the filling power of RL?

03:29:38 13 A. I really don't know the answer to  
03:29:38 14 that question.

03:29:48 15 Q. The second instance you identified  
03:29:52 16 was when you're reviewing inventory figures on RL  
03:29:54 17 materials "after I did transfer down to Park  
03:29:58 18 500." Do you know roughly what time frame that  
03:30:00 19 would have been when you were reviewing inventory  
03:30:00 20 figures on RL materials?

03:30:08 21 A. I'm going to tell you, Alex, it was  
03:30:12 22 sometime in late '77 and that is strictly a  
03:30:12 23 guess.

03:30:16 24 Q. And listed on those inventory figures  
03:30:18 25 that you saw was a tobacco extract?

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03:30:26 2 A. No, no, no. There was a small  
03:30:30 3 quantity of the HRL product that was produced  
03:30:34 4 from that, the RL product that was produced from  
03:30:36 5 that that was still in inventory.

03:30:42 6 Q. I'm sorry, did you misspeak when you  
03:30:42 7 said HRL?

03:30:46 8 A. That was -- RL.

03:30:50 9 Q. Okay. Has there ever been a term  
03:30:50 10 called HRL product?

03:30:52 11 A. Yes.

03:30:56 12 Q. What is HRL? What was HRL?

03:30:58 13 A. HRL was the original Park 500 product  
03:31:04 14 from the time they started up. Just like, for  
03:31:06 15 example, you have RL150-B, HRL was the first  
03:31:08 16 product when they started up.

03:31:10 17 Q. And when we were talking earlier,  
03:31:14 18 just before the break about the specification  
03:31:16 19 range, consideration of whether or not to narrow  
03:31:20 20 the specification range of the finished RL sheet  
03:31:30 21 in the late 1989/early '90 period within the  
03:31:32 22 specification range you described in your  
03:31:36 23 affidavit, let's take the RLB of 41 to 49.5  
03:31:40 24 percent, is there a target figure within that  
03:31:42 25 range, meaning the middle of that range so it

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would be, say, roughly 44.5 or 45 percent, is that the middle of the range I guess?

A. Somewhere in the -- in the middle. The exact number escapes me, but yeah, the target would be there. We did not attempt to narrow the specification range, if I might clarify how you phrased that question at the start.

Q. How would you describe it?

A. We tried to narrow the variation within the process.

Q. I see. So the target, let's say 44/45 stayed the same, it was the range on either end, either above or below that you were considering narrowing?

A. Yes, sir.

Q. During the course of your tenure at Philip Morris, do you know whether the target level for the finished RL sheet has changed?

A. For what?

Q. Let's take RLB.

A. No, no, for what parameters?

Q. I'm sorry, for the soluble levels.

A. Has that target ever changed for RLB or?

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03:33:02 2 MR. NUNLEY: Let me just ask a  
03:33:04 3 clarification. When you say target level are you  
03:33:06 4 talking about the spec or are you talking about a  
03:33:08 5 single number?

03:33:12 6 MR. ROGERS: I'm talking about the  
03:33:12 7 single number in between the specification range  
03:33:14 8 that we've been talking about.

03:33:18 9 Q. You indicated that that middle number  
03:33:20 10 is called the target and then there's a range; is  
11 that right?

03:33:20 12 A. Correct.

03:33:24 13 Q. Okay, and my question is do you know  
03:33:30 14 whether at any time the target level has changed?

03:33:40 15 A. Not to my recollection, but that's --  
03:33:44 16 that's straining the memory banks for a number of  
03:33:46 17 years.

03:33:48 18 Q. Let me ask you to turn in your  
03:33:54 19 affidavit to Page 11 towards the bottom of which  
03:33:58 20 is the subheading "The use of recycled water" and  
03:34:06 21 then starts with paragraph 24. And you'll see it  
03:34:12 22 goes 24, 25 still within the subheading. I want  
03:34:14 23 to ask you about paragraph 26 which starts on the  
03:34:18 24 bottom of Page 12. I just wanted to orient you  
03:34:18 25 in your affidavit.

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Paragraph 26 says as follows: "I am aware of ABC's assertion that the use of RBW and WEL 3 'increases the total amount of nicotine' in a given batch of tobacco materials. That is also false. The use of WEL 3 and RBW does not add nicotine to the reconstituted tobacco. The recycled water system is in a state of equilibrium; each 'batch' of tobacco materials that goes through the continuous and closed RL process gives up," underlined, "WEL 3 and RBW at least equivalent to the WEL 3 and RBW that it receives during the process. The same is true of SBW. No extraneous nicotine is introduced at any point." What did you mean by the word extraneous in the last sentence of paragraph 26?

A. No additional, no outside source.

Q. And by outside source you mean outside of Park 500?

A. External to the raw materials used at Park 500.

Q. And the term you use in the top of Page 13, still in paragraph 26, "A state of equilibrium," is that a term of art within Park 500?



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A. We've talked about it on several occasions during the conversation. It's a term commonly referred to within continuous processes in which the process has achieved a steady state operation.

Q. And when you say still in that sentence that "each batch of tobacco materials that goes through the continuous and closed RL process gives up WEL 3 and RBW at least equivalent to the WEL 3 and RBW that it receives during the process," what did you mean by "at least equivalent"? Are there instances in which there's more?

A. There could be from evaporator losses and so on and so forth. That's the exact reason why you have to add fresh water, in that there's not a perfect balance of the water that you put into the pulper, if that were not the case, you would not have to add any fresh water.

Q. I guess what I'm thinking of is if one batch gives up more WEL 3 and RBW than it received, is that possible?

MR. NUNLEY: You can answer if you understand the question.

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03:37:30 2 A. Yeah, I mean in other words again  
03:37:34 3 you're not in a perfect flat line. There's  
03:37:36 4 variation within the process. So is it  
03:37:42 5 possible? Certainly. Evaporator losses and so  
03:37:48 6 forth, one batch could lose more than another  
03:37:48 7 batch could.

03:37:52 8 Q. Is it likewise also the case that one  
03:37:54 9 batch could gain more than it would lose? By  
03:38:00 10 more I mean more WEL 3 than RBW?

03:38:02 11 A. It can't gain more. It's got to lose  
03:38:04 12 some. Some batches are going to lose more than  
38:04 13 others.

03:38:14 14 Q. When you refer to giving up WEL 3 and  
03:38:18 15 RBW at least equivalent in paragraph 26, are you  
03:38:22 16 referring to a volume level when you're talking  
03:38:24 17 about at least equivalent to?

03:38:28 18 A. Yeah, I would say that's accurate.

03:38:32 19 Q. A volume level of WEL 3 and RBW?

03:38:32 20 A. Correct.

03:38:56 21 Q. I want to switch topics and talk to  
03:39:00 22 you about the ART process, we've referred to it a  
03:39:04 23 few times during the course of the last two days,  
03:39:14 24 and your reaction to the denicotinized  
39:18 25 cigarette. When did you first get involved in

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the ART process?

A. From an actual process standpoint?  
When I came back to Richmond at the end of '89.

Q. And what was happening at that time  
with respect to the ART process?

MR. NUNLEY: Objection as to form.

A. Can you --

Q. What was the state of the ART program  
at that time? At what stage was it?

A. Let me see if I can clarify your  
question. You mean what state was the plant in  
at that point? Were we operating, not operating  
or --

Q. Yes.

A. The plant was in an operational mode  
in October of 1989 when I returned from New York.

Q. And when you say operational mode you  
mean that the plant was producing denicotinized  
cigarettes for commercial sale?

A. For use in test markets, that's  
correct.

Q. Do you know the test markets that it  
was used in?

A. I really don't remember, Alex.

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03:41:04 2 MR. ROGERS: Would you mark this as  
03:41:04 3 Exhibit 17.

4 (Whitman Exhibit 17 for  
5 identification, document entitled "Richmond  
6 processing plants manufacturing plan, 1990 to  
7 1995," production numbers 2030878610 through  
8 2030878791 and PA 802863 through PA 803044.)

03:41:18 9 Q. Mr. Whitman, you've just been handed  
03:41:22 10 what's been marked as Whitman Exhibit 17, which  
03:41:52 11 is a document the top of which says "Richmond  
12 processing plants manufacturing plan, 1990 to  
13 1995." Production numbers are 2030878610 through  
14 2030878791. The corresponding defendant  
15 production numbers are PA 802863 through PA  
03:41:56 16 803044. On the front page appears your name,  
03:41:58 17 J.M. Whitman towards the lower right-hand  
03:42:00 18 corner.

03:42:02 19 Have you ever seen this document  
03:42:26 20 before?

03:42:28 21 MR. NUNLEY: The document that's been  
03:42:32 22 introduced as Whitman number 17 bears the  
03:42:34 23 designation trade secret.

03:42:48 24 A. I remember seeing the document,  
0 42:50 25 Alex. Do I remember all the content of it?

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03:42:52 2 Obviously no.

03:42:58 3 Q. Okay. If you'll just skip ahead to  
03:43:00 4 the second page of the document, rather, I'm  
03:43:06 5 sorry, the third page, you'll see a table of  
03:43:14 6 contents, and I'm on PA 802865. Are you on that  
03:43:14 7 page?

03:43:14 8 A. Yes.

03:43:16 9 Q. And the table of contents item number  
03:43:20 10 2 is processing <sup>plans</sup> ~~plants~~ and then you'll see the  
03:43:24 11 letters A through F naming different processing  
03:43:30 12 plants. And you'll see the entry for Bermuda  
43:34 13 Hundred is letter D. I'm going to ask you to  
03:43:38 14 turn to the page II-D-1, and the production  
03:43:42 15 number is easier, or it may not be, to get to  
03:43:50 16 that page is PA 802944. Are you there?

03:43:52 17 A. Yes, sir.

03:44:00 18 Q. This page appears to describe the  
03:44:02 19 "mission" of the Bermuda Hundred processing  
03:44:06 20 facility and I'll just read it, "To produce  
03:44:08 21 filler with less than 10 percent residual  
03:44:10 22 nicotine for cigarette manufacturing to support a  
03:44:14 23 new brand introduction and the creation of a new  
03:44:16 24 product. Bermuda Hundred is designed to have a  
44:18 25 capacity to support" --

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03:44:18 2 MR. NUNLEY: Of a new market.

03:44:22 3 Q. I apologize. "Of a new market.

03:44:24 4 Bermuda Hundred is designed to have a capacity to  
03:44:26 5 support the production of 12 billion cigarettes  
03:44:30 6 based on a seven-day a week operation or  
03:44:32 7 approximately two market share points."

03:44:34 8 A. Yeah. Alex, can I just clarify  
03:44:36 9 something. You said 10 percent residual.

03:44:40 10 Q. I'm sorry, less than .10 percent.

03:44:40 11 A. Thank you.

03:44:42 12 Q. The second paragraph appears to  
03:44:46 13 describe a process and I'm just going to read  
03:44:48 14 that to you: "The technology for this process is  
03:44:50 15 new to the cigarette industry, but had been  
03:44:52 16 utilized in the manufacturing of decaffeinated  
03:44:56 17 coffee at Kaffee Hag in Germany and most recently  
03:45:00 18 at General Foods in Houston. At Bermuda Hundred  
03:45:04 19 strip will be blended and cut. Nicotine will be  
03:45:06 20 extracted from cut strip and deposited on stems.  
03:45:08 21 A major commitment for the next five years will  
03:45:10 22 be adaptation of the process enhancements  
03:45:20 23 developed by Bermuda Hundred and R&D." In  
03:45:22 24 general terms is that an accurate description of  
45:24 25 the nicotine extraction process that was used at

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Bermuda Hundred to produce the denicotinized cigarette?

MR. NUNLEY: Objection as to form. I don't know that I see a description of the process anywhere.

A. Right.

Q. Is that a general description of what occurs? And by that I mean "Strip will be blended and cut, nicotine will be extracted from cut strip and deposited on stems"? Does that accurately describe what happened at Bermuda Hundred?

A. Yes.

Q. What happened to the stems on which the nicotine was deposited?

A. From the entire operation of the plant during the time that it was operational?

Q. Yes.

A. To my recollection, all those stems went through a processing step at Park 500 and were landfilled.

Q. Are you aware of any efforts to use those stems in <sup>producing</sup> reconstituted tobacco?

A. Were there considerations given to

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03:47:04 2 doing that? Yes.

03:47:10 3 Q. Did you participate in any way in  
03:47:18 4 efforts to consider using those stems in  
03:47:18 5 reconstituted tobacco?

03:47:20 6 A. That work was done by R&D. It wasn't  
03:47:20 7 done by Bermuda.

03:47:22 8 Q. Do you know who specifically worked  
03:47:24 9 on that?

03:47:32 10 A. I really don't recall. I believe it  
03:47:34 11 was Howard Spielberg, though.

03:47:34 12 Q. I'm sorry?

03:47:36 13 A. I believe it was Howard Spielberg if  
03:47:40 14 my memory serves me correctly, but that is,  
03:47:40 15 again, strictly from memory.

03:47:48 16 Q. Do you know whether Donald Knudson  
03:47:52 17 might have worked on that project as well?

03:47:54 18 A. Other than supplying the stems to  
03:47:56 19 R&D? No.

03:48:34 20 ~~MR. ROGERS: Would you mark this as~~

03:48:34 21 ~~Exhibit 18.~~

22 (Whitman Exhibit 18 for  
23 identification, memorandum, from H. Spielberg, to  
24 J.E. Bickett, dated September 22nd, 1989,  
25 production number 2031477543.)

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03:48:36 2 Q. You've just been handed what's been  
03:48:40 3 marked as Whitman Exhibit 18, which is a one-page  
03:48:44 4 document bearing the Philip Morris production  
03:48:46 5 number of 2031477543. It is marked trade  
03:48:48 6 secret. It does not contain a defendant  
03:49:02 7 production number. This appears to be a memo  
8 from H. Spielberg to J.E. Bickett, date September  
03:49:06 9 22nd, 1989, subject "Utilization of MPC treated *stem*  
03:49:12 10 from Bermuda Hundred in RCB." The term MPC --  
03:49:12 11 let me back up.

03:49:14 12 Have you ever seen this document  
49:14 13 before?

03:49:16 14 A. No, I have not.

03:49:20 15 Q. What do you understand the term MPC  
03:49:22 16 stem from Bermuda Hundred to mean?

03:49:26 17 A. The stem was treated with a compound  
03:49:32 18 referred to as monopotassium citrate during the  
03:49:32 19 Bermuda Hundred process.

03:49:38 20 Q. And why was monopotassium citrate  
03:49:40 21 added to the stem of Bermuda Hundred?

03:49:42 22 A. It provided the basis for absorbing  
03:49:48 23 the nicotine on the stem, or it helped to do  
03:49:48 24 that.

49:56 25 Q. Were other stems treated with citric

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03:49:58 2 acid to achieve the same objective?

03:49:58 3 A. To my knowledge, yes.

03:50:00 4 Q. And have you seen references to those  
03:50:02 5 stems as CA stems?

03:50:06 6 A. Yes, I have.

03:50:10 7 Q. Do you know whether any MPC stems  
03:50:14 8 from Bermuda Hundred were used in RCB?

03:50:18 9 A. I have no knowledge of that.

03:50:20 10 Q. I take it RCB is the product that's  
03:50:22 11 generated at the BL facility?

03:50:22 12 A. That's correct.

03:50:26 13 Q. And in September of 1989 remind me  
03:50:26 14 what your position was?

03:50:28 15 A. I was still in New York at that  
03:50:34 16 point. I'm sorry, that doesn't answer your  
03:50:36 17 question. Director of commercial development in  
03:50:38 18 New York.

03:50:40 19 Q. And the content of the memo is very  
03:50:42 20 short. I'll read it: "It is recommended that  
03:50:50 21 ART stems (VSTD1 and VSTB1) be substituted for up  
03:50:54 22 to 3 percent Burley stem in RCB based on  
03:50:58 23 subjective evaluations of RCB production trials.  
03:50:58 24 Would you please issue the appropriate  
03:51:04 25 specifications." Were you aware of any

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subjective evaluations that were conducted on RCB  
that contained ART stems?

A. In this time frame? No.

Q. How about in any other time frame?

A. Later on my recollection is is that  
there were trials conducted, my memory wants to  
say with the CA stems, I'm not even sure of that,  
as to their subjective acceptability in recon.

Q. Do you remember what the results of  
any of those tests were?

A. My recollection is all those test  
results were negative. They were subjectively  
negative.

Q. And you're not sure whether those  
were CA stems as opposed to MPC stems?

A. I'm really not positive of that, no.

Q. Do you remember seeing specific  
documents reflecting the subjective evaluations?

A. No, I do not.

Q. Do you remember any conversations you  
might have had with anyone?

A. I remember the conversations as to  
the subjective, the negative subjectives of those  
things, but specifically was that with Howard or

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03:52:26 2 whomever? I really don't recall.

03:52:46 3 Q. What would you understand this to  
03:52:48 4 mean: "Would you please issue the appropriate  
03:52:52 5 specifications" in a memo from Spielberg to  
03:52:54 6 Bickett, what would that mean, the appropriate  
03:52:58 7 specifications?

03:52:58 8 MR. NUNLEY: Objection. I think it  
03:53:02 9 calls for testimony outside of his area at the  
03:53:02 10 company.

03:53:06 11 A. I mean I really can't tell you.

03:53:10 12 Q. At this time Howard Spielberg was in  
53:10 13 R&D?

03:53:14 14 A. That's my recollection, yes.

03:53:16 15 Q. And Mr. Bickett?

03:53:18 16 A. I'm really not sure.

03:53:24 17 Q. And looking down at the names on the  
03:53:32 18 cc list, E. Cook, R. Heretick, D. Knudson, J.  
03:53:36 19 Myracle, J. Swain, can you identify any  
03:53:38 20 individuals on that list that are in R&D, that  
03:53:38 21 were in R&D at the time?

03:53:48 22 A. To my recollection, the last four  
03:53:50 23 names on that list for sure were in R&D at that  
03:53:56 24 time. Where Elmore Cook was working I have no  
53:58 25 idea.

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03:53:58 2 Q. When I asked you earlier whether  
03:54:02 3 Donald Knudson was involved in any way in  
03:54:06 4 consideration as to whether to use ART stems in  
03:54:10 5 reconstituted tobacco I think your testimony was  
03:54:12 6 something to the effect of only to transport the  
03:54:14 7 stems to R&D. Is that accurate?

03:54:18 8 A. From the standpoint of the fact of  
03:54:22 9 when you asked me that question I was responding  
03:54:24 10 from the time frame in which I was working at the  
03:54:28 11 Park 500 site and Mr. Knudson was there as the  
03:54:32 12 plant manager for the Bermuda Hundred plant.  
03:54:34 13 This precedes that time frame so I have no  
03:54:38 14 knowledge of what his involvement might have been  
03:54:38 15 with this.

03:54:40 16 Q. I see. But your understanding is in  
03:54:42 17 September of 1989 he was in R&D?

03:54:42 18 A. Yes, sir, that's correct.

03:54:46 19 Q. When was he named plant manager of  
03:54:46 20 Bermuda Hundred?

03:54:50 21 A. At the same time I was named site  
03:54:50 22 manager for the Park site.

03:54:56 23 Q. Have you ever spoken with Dick Uhl  
03:54:58 24 about tests on the use of ART stems in  
03:55:00 25 reconstituted tobacco?

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03:55:14 2 A. I honestly don't recall.

03:55:22 3 Q. Did the issue of using ART stems in  
03:55:24 4 reconstituted tobacco come up in any discussions  
03:55:26 5 you had with Mr. Uhl in preparing the affidavit  
03:55:28 6 that you've submitted in this case?

03:55:32 7 A. Not that I recall.

03:55:50 8 MR. ROGERS: Would you mark this as  
03:55:50 9 Exhibit 19.

10 (Whitman Exhibit 19 for  
11 identification, two-page document, production  
12 numbers 2031438741 and 203148742 and PB 204500  
13 and PB 204501.)

03:56:06 14 Q. Do you recall smoking any  
03:56:08 15 denicotinized cigarettes that contained RL?

03:56:18 16 A. De-nic cigarettes that contained RL?  
03:56:20 17 Not that I can recall, no.

03:56:26 18 Q. What were the tobacco component parts  
03:56:30 19 of the denicotinized cigarette? Was it just  
03:56:32 20 lamina?

03:56:38 21 A. From a production standpoint within  
03:56:42 22 the Bermuda Hundred processing plant the only  
03:56:44 23 thing I can recall is processing just lamina,  
03:56:46 24 yes.

03:56:50 25 Q. Nothing else went into the finished

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03:56:52 2 Next product?

03:56:54 3 A. Tobacco component-wise?

03:56:54 4 Q. Right.

03:56:56 5 A. Not that I can recall, Alex.

03:57:04 6 Q. And what was added to the finished  
03:57:06 7 Next product that wouldn't fall within what you  
03:57:10 8 consider tobacco component-wise?

03:57:10 9 A. Whatever the flavor system would have  
03:57:12 10 been added during cigarette manufacturing.

03:57:18 11 Q. You've just been handed what's been  
03:57:40 12 marked as Whitman Exhibit 19, two-page document,  
13 production numbers are 2031438741 to <sup>2031438742</sup>~~203148742~~.

14 The corresponding defendant production numbers  
03:57:42 15 are PB 204500 to PB 204501. It appears to be a  
03:57:46 16 project update.

03:57:48 17 I'll say at the outset it is marked  
03:57:52 18 highly confidential by plaintiffs in this case.  
03:57:54 19 The project number is 1307.

03:57:56 20 The project title is reconstituted  
03:58:00 21 tobacco development. The project leader is R.G.  
03:58:06 22 Uhl and the period covered is September 1990.  
03:58:08 23 Have you ever seen this document before?

03:58:10 24 A. No, sir, not that I can recall.

58:12 25 Q. Item number 1 on this is "ART stem

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utilization." A is "Objective: Develop the capability to fully utilize spent absorber stems from the ART process." Do you understand the term spent absorber stems from the ART process to mean those stems on which the nicotine has been deposited in the ART process?

A. Yes, I do.

Q. So spent absorber stems would have a higher quantity of nicotine than they did before they were used in the ART process?

A. That's correct.

Q. And then turn to item B, "Results: The status on qualifying the use of ART stems in reconstituted sheet is as follows: MPC-RCB containing 2 percent RCB stems has passed all POL and panel testing. Implementation awaits the installation of a feeder at the BL plant tentatively ~~temporarily~~ scheduled for December."

And still within that subheading is "CA - blended cigarettes containing either 5 percent CA stems in RCB or 2 percent CA stems in RLTC passed flavor development and MC panel testing. The combination of the two sheets in the same cigarette gave detectable subjective

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differences."

Looking at this document today, does that refresh your recollection as to the subjective evaluations of using ART stems in reconstituted tobacco?

A. My only recollection is that the materials didn't pass. It's the only thing I can recall.

Q. Do you know specifically what they didn't pass?

A. Subjective testing.

Q. But you're not sure again whether it was just the CA stems or just the MPC stems?

A. My recollection is that it was all of them, but that's strictly from recollection.

Q. If you look at the item dealing with MPC, it appears that "RCB containing 2 percent MPC stems has passed all POL and panel testing." What's next in terms of the evaluation of a product after something has passed all POL and panel testing?

MR. NUNLEY: I believe, Alex, you asked John about this yesterday, not with respect to ART stem. I think he told you his knowledge

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04:01:08 2 of POL and panel testing basically was they were  
04:01:08 3 both conducted and he didn't have much more  
04:01:10 4 knowledge of that.

04:01:16 5 MR. ROGERS: Well, I'm just simply  
04:01:18 6 going to ask my question. If he's already  
04:01:22 7 answered it you can object on that ground if you  
04:01:24 8 think that's the case. In the interest of  
04:01:26 9 closing the deposition for today I'd like to just  
04:01:28 10 ask my question rather than look back to see  
04:01:30 11 whether or not it was the exact question I asked  
04:01:30 12 yesterday.

01:32 13 Q. Based upon your knowledge of  
04:01:36 14 evaluation of products and the procedure that  
04:01:42 15 Philip Morris uses, what's next after a product  
04:01:44 16 has passed all POL and panel testing?

04:01:50 17 A. I'm really not sure. You'd have to  
04:01:52 18 ask the product development folks within R&D.

04:02:02 19 Q. It's your understanding, based on  
04:02:04 20 your recollection, that none of the ART stems  
04:02:08 21 were used in reconstituted tobacco sold  
04:02:08 22 commercially; is that correct?

04:02:10 23 A. I'm sorry, say that again.

04:02:14 24 Q. Sure. Is it your understanding that  
02:18 25 none of the ART stems that were used in

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04:02:22 2 reconstituted tobacco -- I'm sorry. None of the  
04:02:26 3 ART stems were used in reconstituted tobacco sold  
04:02:28 4 commercially in the United States, is that your  
04:02:28 5 understanding?

04:02:34 6 A. Strictly from recollection, yes.

04:02:40 7 Q. What happened to the ART stems?

04:02:40 8 MR. NUNLEY: That was asked and  
04:02:42 9 answered but you can answer it again.

04:02:48 10 A. We washed those things in a separate  
04:02:50 11 processing stage at Park 500 and the stems went  
04:02:52 12 to landfill.

02:52 13 Q. And who was in charge of that  
04:02:56 14 activity that you've just described?

04:03:04 15 A. Someone within the Park 500 plant was  
04:03:06 16 delegated that particular responsibility of  
04:03:08 17 overseeing the fact that that occurred.

04:03:10 18 Q. Who did the delegating?

04:03:10 19 A. I did.

04:03:14 20 Q. And who did you receive your  
04:03:14 21 direction from?

04:03:26 22 A. It was from product development that  
04:03:28 23 we weren't going to use the stems, but who  
04:03:30 24 specifically, Alex, I can't remember.

03:32 25 Q. Did that direction come in the form

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04:03:32 2       of a memo?

04:03:40 3           A.       I can't recall.

04:03:46 4           Q.       Do you recall yesterday the closeout  
04:03:50 5       report that I asked you about? Do you recall  
04:03:54 6       ever seeing a closeout report for tests on  
04:03:58 7       whether to use ART stems in reconstituted  
04:03:58 8       tobacco?

04:04:02 9           A.       No, I've never seen that.

04:04:06 10          Q.       And just so I have the dates right,  
04:04:12 11       the total quality management initiative was  
04:04:16 12       implemented at Park 500 in 1987 you said?

04:04:18 13          A.       Yes.

04:04:20 14          Q.       And it appears from Whitman Exhibit  
04:04:28 15       19 that these tests of ART stems were conducted  
04:04:34 16       on or about September 1990. Do you know where  
04:04:38 17       these tests were conducted in terms of producing  
04:04:42 18       the RCB?

04:04:54 19          A.       No, I don't, and -- no, I don't.

04:05:00 20          Q.       At this time, roughly September 1990,  
04:05:02 21       was the total quality management initiative  
04:05:06 22       implemented at the BL plant?

04:05:14 23          A.       I really can't tell you what progress  
04:05:16 24       they had made up to that point in that plant.

05:22 25           Q.       And to whom at Park 500 did you

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delegate the responsibility for disposing of the stems as you've described?

A. To Mr. Narron.

Q. And did he ever report back to you on the results of his activities?

A. Yeah, he and the person he had delegated it to kept me apprised of the fact of how many had been disposed of and when we finished disposing of them.

Q. Were any records kept on the disposal activities?

A. I really can't answer that.

Q. Do you know the person that he delegated to assist him with the project?

A. I believe that was Bill Estes.

Q. And when I asked you whether there were any records kept on the disposal activities you said I really can't answer that. Does that mean to say that you just don't recall?

A. Right. I really don't recall having seen any.

Q. And you said earlier that Mr. Narron and the person he had delegated kept you apprised when "we finished disposing of them." Do you

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remember roughly when that was?

A. I really don't, Alex.

Q. And do you know whether there are any documents that might indicate when the disposal process was finished?

A. I really don't.

Q. And when you were processing the ART stems at Park 500 for the purposes of the disposal, was that on line 3?

A. My recollection it was on line 3, yes.

Q. And was line 3 simultaneously producing finished RL sheet?

A. Correct.

Q. So is it possible at one time to be disposing of the ART stems in the fashion that you've described and producing finished RL sheet without the two processes ever interacting?

A. Oh, absolutely, sure.

Q. Would you describe why you gave the answer you just did?

A. Yeah, we used a spare tank to wash the stems and the wash water went straight down to the waste treatment plant and the stems were

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discharged and landfilled. They never came in  
contact with the RL production process.

Q. Were the stems used at Bermuda  
Hundred, and I mean prior to the nicotine  
extraction, just simply preparing the stems for  
the extraction process, did you also wash those  
stems at that time before using them in the  
extraction process as the absorbent medium for  
the nicotine?

A. Be more specific. What do you mean  
by washing?

Q. I simply mean applying water to them  
in order to remove whatever would be removed from  
the water. Was that a stage in preparing the  
stems for the ART process?

A. Not -- not that I can recall. The  
stems were rolled and cut if my memory serves me  
correctly, and I'm doing that strictly from  
memory.

Q. I'm sorry, what do you mean by rolled  
and cut?

A. Processed so that -- I'm not even  
sure of that. I'd have to even go back and  
look.

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04:09:36 2 MR. ROGERS: Would you mark this as  
04:09:38 3 Exhibit 20.

4 (Whitman Exhibit 20 for  
5 identification, memorandum, to Mr. Knudson, from  
6 Messrs. Grubbs and Prasad, dated April 14, 1987,  
7 production numbers 2031437004 through 2031437006  
8 and PB 110857 through PB 110859.)

04:09:50 9 Q. You've just been handed what's been  
04:09:52 10 marked as Whitman Exhibit 20 which is a  
04:10:10 11 three-page document, production numbers  
12 2031437004 to 2031437006. The defendants'  
10:10 13 production numbers are PB 110857 to PB 110859.  
04:10:16 14 This is a memo dated April 24, 1987 from H.  
04:10:22 15 Grubbs and R. Prasad to Mr. D.B. Knudson, subject  
04:10:24 16 matter efficient washing of stems. The document  
04:10:26 17 is stamped highly confidential.

04:10:28 18 I'll just read the first paragraph  
04:10:32 19 and ask you a question: "Project ART requires  
04:10:34 20 that the Bright stems be washed in an efficient  
04:10:36 21 way, in order to reduce the background nicotine  
04:10:40 22 level to under 0.1 percent DWB. Currently, the  
04:10:46 23 Bower Digester requires four passes to achieve  
04:10:48 24 target nicotine level in the stem. The wash  
10:52 25 liquor is too dilute to be of any use and it is

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presently discarded." Looking at this document,  
does this refresh your recollection about washing  
stems in the course of Project ART?

A. No, it does not.

Q. If you'll look to the second  
paragraph, the authors propose to "wash stems in  
an efficient manner using a pulse column  
extractor" and then they describe in the last  
sentence of that paragraph, "The resulting wash  
liquor concentration will be high enough to allow  
the soluble solids to be used in sheet making  
operation." Do you know of any substance in the  
ART process that was ever used in the sheet  
making operation?

A. Absolutely not.

Q. If I can direct your attention to  
Whitman Exhibit 8 which is the article by Donald  
Silberstein that we talked briefly about  
yesterday, I want to ask you one question and  
that will conclude today's session.

Do you have it in front of you?

A. Yes, sir.

Q. If you'll turn to Page 3 of this  
document, the production number is <sup>B</sup>~~PA~~ 102086.

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The middle column has a subheading "Nicotine fortification," and I'll just read it: "The flexibility of the two-step Kimberly-Clark process allows for many changes in the chemical properties of the finished reconstituted tobacco sheet. One change that should be discussed when speaking of flavor is the fortification of the nicotine content of the finished sheet. Though standard reconstituted tobacco products contain 0.7 to 1.0 percent nicotine, LTR Industries offers the possibility of increasing the nicotine content of the final sheet to a maximum of 3.5 percent." Based on your knowledge of Philip Morris's reconstituted tobacco process, does Philip Morris's reconstituted tobacco process offer the possibility of increasing the nicotine content of the final sheet to a maximum of 3.5 percent?

MR. NUNLEY: Objection. Calls for speculation.

Q. You can answer.

A. I've never seen that considered, never seen that done.

Q. Based upon your knowledge of the

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process, is it physically possible to increase  
the nicotine content of the finished sheet that's  
produced at the Park 500 facility?

MR. NUNLEY: Physically possible to  
increase it?

MR. ROGERS: The nicotine content of  
the finished sheet, based upon his knowledge of  
the reconstituted tobacco process that Philip  
Morris uses.

MR. NUNLEY: Physically possible to  
increase it to what?

MR. ROGERS: Above that which it's  
currently produced at.

Q. Which you estimated to be roughly 1  
to 1.3.

MR. NUNLEY: Objection; speculation.

A. But how?

Q. You don't know any method of  
increasing the nicotine content above what you  
understand to be the present content of 1 to 1.3  
percent?

A. The only thing I am aware of is what  
we feed in and what we get out. I mean if you  
had some specific methodology, I have no idea how

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04:15:02 2 he's accomplishing this here.

04:15:02 3 Q. Did you ever have any discussions

04:15:04 4 with Mr. Silberstein in the context of your

04:15:08 5 dealings with him in qualifying sheet produced by

04:15:14 6 Kimberly-Clark about a process used by LTR to

04:15:18 7 increase nicotine content of the final sheet?

04:15:20 8 A. Absolutely not.

04:15:22 9 REQ MR. ROGERS: Why don't we conclude

04:15:30 10 for today. I want to say one thing for the

04:15:32 11 record, Chip. Earlier in Mr. Whitman's testimony

04:15:38 12 he mentioned RL process specifications I

15:40 13 believe. They may well have been produced in

04:15:46 14 this case. If I could request that you simply

04:15:48 15 ask Mr. Whitman specifically what he was talking

04:15:50 16 about and if those documents have been produced

04:15:52 17 for you to identify them.

04:15:54 18 MR. NUNLEY: I'm not going to be put

04:15:56 19 to the position of searching through our

04:16:00 20 documents to locate those. You know, I think

04:16:02 21 anything that has to do with the RL process in

04:16:10 22 date, has been produced. I gotta tell you I've

04:16:12 23 got plenty enough to do without tracking down the

04:16:16 24 documents that you have as much access to as I

16:16 25 do.

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04:16:18 2 MR. ROGERS: Your witness testified  
04:16:20 3 in this deposition as to specific documents  
04:16:24 4 dealing with process specifications of the RL  
04:16:26 5 process and I simply want to make sure that those  
04:16:30 6 documents have been produced to the defendants in  
04:16:30 7 this case.

04:16:34 8 MR. NUNLEY: As I've said, any  
04:16:38 9 documents relating to RL process in date, to my  
04:16:40 10 knowledge, have been produced.

04:16:46 11 MR. ROGERS: Because Mr. Whitman  
04:16:50 12 didn't identify the specific dates of the process  
04:16:52 13 specification documents that he had based his  
04:16:54 14 testimony on, I have no way of knowing whether  
04:16:56 15 those documents were produced.

04:17:00 16 MR. NUNLEY: I mean I'll talk to the  
04:17:00 17 witness about it, but I'm not committing to do  
04:17:04 18 any type of a search of the documents produced.

04:17:40 19 Q. Mr. Whitman, do you remember anything  
04:17:42 20 about the RL process specification documents that  
04:17:44 21 you talked about earlier in your testimony? I  
04:17:46 22 mean date --

04:17:48 23 MR. NUNLEY: Alex, I told you I  
04:17:52 24 needed to get out of here near four. You told me  
04:17:54 25 about ten after that you had one more question.

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You had a couple of more which I'm happy to do,  
but I have a commitment at 5 o'clock.

MR. ROGERS: I appreciate your  
commitment. We didn't start until roughly 9:20  
or so this morning, although we were all here at  
nine, and we're now at 4:18. So I mean it's not  
as if I'm holding you over when we started on  
time. We did start late today. And I just want  
to clear this up for the record because there  
were documents identified that I'm just trying to  
get a clear sense for what they were.

Q. That having been said, Mr. Whitman,  
I'll just repeat my question. Do you remember  
anything about the RL process specification  
documents that you talked about earlier in your  
testimony?

A. What do you mean anything?<sup>about</sup>

Q. The date, do you remember any names  
that appeared on them, do you remember any of the  
specific information?

A. The dates that I would recall in that  
regard, Alex, were from the time that I was in  
charge of our process control and quality  
assurance group which would have been in the late

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seventies time frame.

MR. ROGERS: As we said at the outset  
this morning, Chip, and I think you said for the  
record, you're going to endeavor to identify and  
gather the documents upon which Mr. Whitman  
relied in preparing his affidavit and identify  
those production numbers and hopefully make  
Mr. Whitman available for a continuation of this  
deposition.

MR. NUNLEY: Well, I'll rely on the  
statement I made at the outset of the deposition  
about that.

MR. ROGERS: Absolutely. I was just  
reconfirming that. I was content at the time.

MR. NUNLEY: I don't necessarily  
accept your characterization of it. I stand on  
what I said.

MR. ROGERS: Let's do that and we'll  
break for the day.

(Continued on next page.)

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04:19:36 THE VIDEO OPERATOR: We're going off  
04:19:40 the record. The time on the screen is 4:19:51.  
04:21:14 (Time noted: 4:19 p.m.)

  
JOHN M. WHITMAN

Subscribed and sworn to before me  
this 25<sup>th</sup> day of October, 1995.

Sett S. Jones, Notary  
My Commission Expires 10 31-97

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C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

COUNTY OF NEW YORK )

I, GAIL F. SCHORR, a Certified  
Shorthand Reporter and Notary Public within and  
for the State of New York, do hereby certify:

That JOHN M. WHITMAN, the witness  
whose continued deposition is hereinbefore set  
forth (pages 247 through 478) was previously duly  
sworn, and that such continued deposition is a  
true record of the testimony of said witness.

I further certify that I am not  
related to any of the parties to this action by  
blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 16th day of August, 1995.

Gail F Schorr  
GAIL F. SCHORR, C.S.R.

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E X H I B I T S

DESCRIPTION

PAGE LINE

(Whitman Exhibit 10 for identification, document, production numbers 2030361786 through 2030361798 and PA 138470 through PA 138482.)..... 293 8

(Whitman Exhibit 11 for identification, document entitled "Procedure for collecting SEL samples," production numbers 2030749658 and 2030749659, and PA 483705 and PA 483706.)..... 312 5

(Whitman Exhibit 12 for identification, document, production numbers 2022902491 through 2022902592 and PA 151529 through PA 151547.)..... 363 21

(Whitman Exhibit 13 for identification, document entitled "Nicotine reduction of an aqueous tobacco extract using a membrane based process system," production numbers 2031437082 through 2031437120 and PB 150935 through PB 110973.)..... 378 21

(Whitman Exhibit 14 for identification, copy of U.S. patent 5,018,540, production numbers 2022902477 through 2022903291, and PA 151916 through PA 151975.)..... 394 5

(Whitman Exhibit 15 for identification, two-page document, production numbers 2025321065 and 2025321066 and PA 127981 and PA 127982.)..... 418 2

(Whitman Exhibit 16 for identification, two-page document, production numbers 2024411266 and 2024411267 and PA 198696 and PA 198697.)..... 422 6

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1	Whitman - Highly Confidential - Trade Secret		
2	(Whitman Exhibit 17 for identification,		
3	document entitled "Richmond processing		
4	plants manufacturing plan, 1990 to 1995		
5	," production numbers 2030878610		
6	through 2030878791 and PA 802863		
7	through PA 803044.).....	450	3
8	(Whitman Exhibit 18 for identification,		
9	memorandum, from H. Spielberg, to J.E.		
10	Bickett, dated September 22nd, 1989,		
11	production number 2031477543.).....	454	21
12	(Whitman Exhibit 19 for identification,		
13	two-page document, production numbers		
14	2031438741 and 203148742 and PB 204500		
15	and PB 204501.).....	460	9
16	(Whitman Exhibit 20 for identification,		
17	memorandum, to Mr. Knudson, from		
18	Messrs. Grubbs and Prasad, dated April		
19	14, 1987, production numbers 2031437004		
20	through 2031437006 and PB 110857		
21	through PB 110859.).....	470	3
22			
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Keyword: (INSERT  
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Keyword: DIR  
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Keyword: REQ  
[302,21]  
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REQ MR. ROGERS: I would for the record,  
REQ MR. ROGERS: Why don't we conclude

Keyword: RUL  
Not Found.

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